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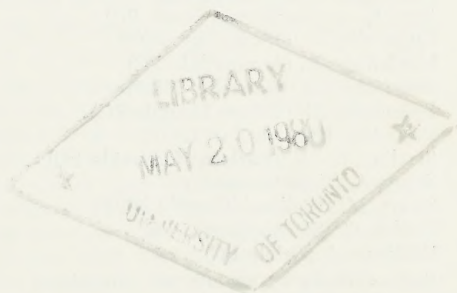
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# Legislature of Ontario Debates

## Official Report (Hansard)

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**Standing Committee on the Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**

Wednesday, April 16, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, APRIL 16, 1980

The committee met at 10:12 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

**Mr. Chairman:** I am going to recognize a quorum. We are dealing with the estimates of the Attorney General.

**Mrs. Campbell:** You know, I have an awful feeling of déjà vu. It seems we just left.

**Hon. Mr. McMurtry:** We just left a week or two ago.

**Mr. Chairman:** There are 20 hours in these estimates. The minister has an opening statement which will be passed to the committee members and to the press. It is my hope that while we can have a fairly general and wide-ranging discussion by the minister and by the two opposition critics of the first vote, after that members of the committee will stick to the particular vote under discussion. That's the only way we can be fair to those members who obey the rules and bring in their particular concerns under the appropriate vote.

If possible, I would like to see that we finish with enough time to devote to some of the last vote items, and not as in some past estimates in which people with concerns on the final votes simply did not get those concerns dealt with.

**Hon. Mr. McMurtry:** Just before I commence my opening statement, Mr. Chairman and colleagues, I want to indicate to the committee that I have a problem for two days of next week. I understand my office some weeks ago communicated to the clerk of the committee that we have some very important commitments which were made prior to the setting of the dates for this committee. Most of this involves a very important session of the Ontario Police College, in which I have more than 90 police chiefs from Ontario assembling and which will involve both Wednesday and Thursday of next week.

**Mrs. Campbell:** Mr. Chairman, I would point out, however, that these are the estimates of the Attorney General, not the Solicitor General.

**Hon. Mr. McMurtry:** I'm quite aware of that. I just wanted to alert the committee to the fact that there's just no rational way in which I can delay his commitment, which I made several months ago.

I must admit I had not expected the estimates to come on so quickly, in view of the fact that we finished only three or four months ago.

**Mr. Chairman:** We have scheduled private members' bills for Thursday, but it does mean that Wednesday would be wasted.

**Mrs. Campbell:** I don't know whether the Attorney General is aware of the discussion we had at this committee last Friday.

**Mr. Chairman:** I asked our clerk to send him a letter to that effect.

**Mrs. Campbell:** I think this points out a problem. It does seem to me basically, when estimates are called, it behooves all of us who are concerned to be here.

I would have to take advantage of the statement of the Attorney General to point out once more the difficulty of the conflict in his two roles. The Attorney General should not, in normal cases, be involved with meeting the police chiefs. It's the Solicitor General who does that.

**Hon. Mr. McMurtry:** I can assure you, Mrs. Campbell, I was Attorney General before I became Solicitor General and met with police chiefs on many occasions.

**Mrs. Campbell:** I'm sure. But I think the reason for delaying the estimates would not have been accepted if you were in the role only of the Attorney General. I don't think there's much we can do about it, but I would say, Mr. Chairman, this committee cannot meet to do estimates in the absence of the minister. That would be my view.

**Mr. Chairman:** That is duly noted. We will not sit next Wednesday. Mr. Attorney General?

**Mr. Warner:** Are you suggesting that we could sit to do some other business?

**Mr. Chairman:** No. I'm suggesting that because Wednesday and Thursday are tied up, I've scheduled the only other business we have for Thursday. That means we will not sit on Wednesday.

**Mrs. Campbell:** And we will not sit on Friday, I take it. The Friday business is coming on Thursday.

**Mr. Chairman:** Yes. If the Attorney General is free on Friday, then we'll go along with the estimates.

**Hon. Mr. McMurtry:** As far as I know, I'm free on Friday.

Thank you very much, Mr. Chairman.

Mr. Chairman and colleagues, I would like to make a relatively brief statement before we begin the detailed discussion of the estimates of my ministry.

This is the fifth year I've had the opportunity of presenting the estimates. As in past years, particularly when these discussions are held in committee, my officials and I look forward to discussing our programs and policies in frankness and in detail, and no doubt we will continue to benefit from the points raised by committee members.

Because we engaged in these discussions only four months ago, I do not propose to go over the past year in great detail. It was a year of extraordinary challenges and progress in the administration of justice.

I am proud of the progress we've made both in terms of new legislation and administrative reforms. But, rather than reciting that record, I would prefer to focus on the plans and programs which lie ahead.

In the future, as in the recent past, a major aim behind our initiatives is to make the law and the administration of justice more accessible to the public. This is reflected in most of the legislation I have introduced and will be bringing forward and it is reflected in my ministry's continuing public education efforts.

First, I would like to deal with the small claims courts and our plans for a new provincial court (civil division) in Metropolitan Toronto. As members know, the jurisdiction of these courts was expanded two years ago to \$1,000 and we have appointed full-time judges in Metropolitan Toronto, Ottawa, Hamilton and St. Catharines. We have produced highly-praised booklets and pamphlets to acquaint the public with the remedies available in this court and to assist people in handling their claims.

I expect we will be in a position, by the end of the year, to begin providing French-

language services in the small claims courts in appropriate areas. Our publications are already available in French.

I want to advise committee members that the provincial court (civil division) will begin operation on June 2. As you know, this court will have jurisdiction on claims up to \$3,000 and will operate as a pilot project in Metropolitan Toronto for three years.

The newly-created civil division will assume all the jurisdiction of the small claims courts in Metropolitan Toronto. In addition, the civil division will have jurisdiction over civil claims up to \$3,000.

The procedural rules will be based on a form of simplified procedure where innovative measures will be tried and assessed. Particularly in the pre-trial and pleading stages of an action, there is room for new approaches and a more streamlined structure for civil litigation. An individual will be free to hire a lawyer to represent him in the civil division, but steps will be taken to keep legal fees down and to reduce the overall cost of litigation.

The judges presiding in the civil division will be those small claims court judges appointed by the province who are currently sitting in Metropolitan Toronto. The existing court offices and court staff will be utilized in the project. Some increase in resources will be necessary, but the increase will not be great.

My officials will closely monitor the results and experiences of this court with a view to extending it elsewhere.

**10:20 a.m.**

In addition to French-language services in the small claims courts, we are making substantial progress in expanding this service in other courts. Two weeks ago, French language services became available in the provincial court (family division) in 14 communities. Four of them are in the district of Cochrane, four in the district of Algoma, three in the district of Nipissing, two in the united counties of Prescott and Russell, and one is in the united counties of Stormont, Dundas and Glengarry. These brought to 16 the number of communities in which the services of the provincial court (family division) are available.

In addition, French-language services are available in the provincial court (criminal division) in 11 communities. As members know, since December 31, 1979, any accused person in Ontario has the right to be heard by a bilingual judge and bilingual jurors in trials with a jury. This was made possible through



an amendment to the Criminal Code that was made at my request.

The number of cases being heard in French or in a bilingual format is small in comparison to our total case load. We expect it to increase as the availability of the services becomes better known and the capabilities of the legal profession in this regard are strengthened.

The fact that we are making such substantial progress in providing this service is a tribute to the dedication and hard work put into it by staff of the ministry, the courts, the legal profession, the police and others involved in the administration of justice.

Further, I want to recognize publicly the role of the members of the Legislature who have concerned themselves with this issue. The discussions we've had from time to time, including during debate on the amendments to the Judicature Act and Juries Act, have been thoughtful and helpful in advancing the administration of justice in this regard.

I want now to turn to two important acts that are awaiting third reading in the Legislature. They are the Act to protect against Trespass to Property and the Act respecting Occupiers' Liability. These bills represent a substantial reform of our trespass legislation and will provide benefits both to the owners of rural land and to urban residents who in increasing numbers are seeking recreational outlets in the countryside.

The legislation has been the subject of several years of discussion and broad public participation. If it is passed by the Legislature in a few weeks, as I hope it will, my ministry, in co-operation with agricultural and rural interest groups, as well as with recreation organizations, will begin implementation of it this summer.

Since our last discussion of the estimates, ministry staff have devoted an enormous amount of time and effort to the implementation of the Provincial Offences Act. Besides the public education material, which members have seen, senior ministry officials conducted a series of intensive seminars on the new procedures for justices of the peace and other court officials and participated in programs for police officers and officials of other enforcement agencies.

In terms of other legislation, I expect to be reintroducing in the near future the Children's Law Reform Act. There will be amendments from the bill I introduced last fall for discussion purposes and the changes will reflect our considerations of the comments that have been made.

I will also be introducing the Limitations Act. This will be a complete revision of the

statute, designed to remedy a number of inequities that have arisen and to make the process clearer and more understandable to the general public.

Other items facing us in the coming months include the report of the professional organizations committee, chaired by the Deputy Attorney General, and of the special study into mind-development groups, sects and cults by Dr. Daniel G. Hill. I expect to table the report of the professional organizations committee shortly. The report from Dr. Hill's study, I am advised, is now in its final stages.

I know that many members are interested in questions of court space and manpower in our system. A particular problem has been the judicial district of York. I believe we have now overcome many of our difficulties in this area. Since I became Attorney General in 1975, I have increased the number of judges in the provincial court (criminal division) by 50 per cent. In the last three years we have doubled the number of courtrooms in Metropolitan Toronto.

In a few weeks, when the new courthouse in Newmarket opens, we will add a further 14 courtrooms and at that point establish a new judicial district for the region of York to be called the judicial district of the region of York. This will involve a major improvement for the people of the region of York who will have access to a full range of court services at Newmarket, rather than having to travel to downtown Toronto.

Finally, Mr. Chairman, let me turn to the core of our proceedings here, the funds themselves.

As many members know, I have spoken on previous occasions of my concerns about the amount of money allotted to the administration of justice and in particular to the ministry of the Attorney General.

Economic conditions have posed limitations on the money available to all governments. These restraints have required governments to find innovative methods of providing essential public services, to ensure that every dollar from the taxpayers is put to the most beneficial and efficient use. Many of the reforms we have taken and now have under consideration are towards that end.

While the level of funding will continue to pose challenges for the ministry, it is useful to note that we have made considerable headway in the past five years. In 1975-76, the ministry budget was \$95 million. This year it is \$164 million, an increase of about 72 per cent, which represents evidence of a higher priority being assigned to the administration of justice.



**Mr. Chairman:** Thank you, Mr. Minister. We now have the leadoff statement by the Liberal critic of the Attorney General.

**Mrs. Campbell:** I would just like to make a brief reference to the last part of the Attorney General's statement. I had occasion to meet with the Advocates' Society and I wish the Attorney General would straighten them out, because they were challenging me as to why I haven't some resolution before the House increasing the budget of the Attorney General. I pointed out that he had my heartiest support on any increase in funding but that they had to know that such a resolution would be automatically out of order coming from a member of the opposition. I just thought I would let you know that.

You have the support of the community, I think, in the concerns for funding in the administration of justice because it is after all the key to the democratic process, it seems to me. I would like to start off on that note.

I would also like to say with reference to your procedures, Mr. Chairman, I am going to deal with some broad topics and then keep my remarks to the votes in question, as you have suggested, with the specifics, when we get to the crown, the courts in the Hamilton area and such matters.

It has been less than five months since this committee last met to review the estimates of the Ministry of the Attorney General. Nevertheless, in my opinion, it is none too soon. Indeed, given my many concerns relating to the activities of this ministry, I would be quite prepared to meet in such a forum to review the Attorney General's performance every month, if it were only possible.

During the previous Attorney General's estimates, we who sit here as opposition members in this committee have attempted to address ourselves to the broader issues that underlie the nature of the Attorney General's role in the administration of justice in this province. It has become a standard format of our introductory remarks to review the position of the Attorney General in this context, both in this province and in other common-law jurisdictions.

We have quoted at length numerous treatises on the role of the Attorney General in a British parliamentary tradition from Sir Hartley Shawcross to Lord Simon to Lord Elwyn-Jones. I do not propose to repeat those.

For my part, I have on several occasions indicated my deep and continuing concern that the same individual who is charged with responsibility for the administration of justice

in the province is also interested with the supervision of the police forces of this province.

The extensive academic arguments of our earlier estimate hearing have been well documented in Hansard. But the issue is not merely academic. It is of real concern, especially in the light of the increasingly high profile that our justice system and police forces have attained over the last few years in this province. It is unfortunate that many would attribute this high profile to instances of injustice, both real and perceived, as opposed to deserved acclaim.

10:30 p.m.

It is in the context of this present reality we must view the question of the separation between the Ministries of the Attorney General and Solicitor General. Each of these ministries has supervisory jurisdiction over the major components of our system of administration of justice. These components include, on the side of the Solicitor General, the Ontario Provincial Police; the regional and metropolitan police forces; the chief coroner's office; the fire marshal's office; and so on.

On the side of the Attorney General, they include the crown attorneys; the court system; and the protection of the public interest in the administration of justice.

In the last few years these components, both separately and severally, have been the subject of intense and critical scrutiny in the public limelight. Certainly one major and important reason why these various functions have been allocated to different ministries was to ensure the resolution of the conflicting interest. These functions represented would not devolve upon one individual.

We have created separate ministries, separate lines of jurisdiction and authority, so as to ensure that the conflict between these various interests would act as a check to arbitrary decisions or to the semblance of arbitrary decisions. Yet in the light of present-day controversies, it should be apparent to the Attorney General that whatever may have been the rationale for separating the ministries in the early 1970s has far less application to the question at hand than the problems and concerns that beset these ministries in the 1980s.

And further, in the light of these indisputable problems and concerns raised both by members of this Legislature and by interested and dedicated members of our various communities, the Attorney General should be admonished for thinking this issue is grounded in partisan political consideration.

Therefore, I repeat the concerns I have raised during the last two hearings into the estimates of this ministry.

Further, I would ask the Attorney General again, in the context of the controversies that have surrounded the various components of these two ministries, whether he will not reconsider and recommend to the Premier (Mr. Davis) that he be relieved of the responsibilities for one of these ministries. With respect to this issue, this is not a personal attack on the Attorney General nor on his performance. It is a question of perceptions, and it would be a step towards assuring the people of this province of the independence in both substance and form of the various components in the system of administration of justice in this province.

One matter I would like to address at some length in the course of these estimates is the issue of domestic violence, and in particular, assaults against wives. Members of the committee should know that I have spoken out repeatedly regarding this crime. Recently, I have posed several questions to the minister in the House regarding this grave matter. I would like to take this opportunity to discuss the issue and, I trust, to get some commitments from the minister that may assist women who are the subject of physical abuse.

The incidence of wife beating in Canada is significant. The Canadian Advisory Council on the Status of Women, in a study released in January 1980, estimates that every year one in 10 Canadian women who are married or in a relationship with a live-in lover is battered. American studies of the incidence of this crime, based on household surveys, indicate that this estimate is probably conservative. Coming from this government I suppose that is right.

Figures and estimates are one thing. It is well known that no matter where the location, every time a women's shelter is opened in Canada, it is rapidly filled with women and children seeking refuge from violent husbands and fathers. Marital violence sometimes ends in divorce, sometimes in murder. For thousands of women, it is a way of life that goes on and on. Women are punched, slapped, kicked, thrown across rooms and downstairs. They are attacked with knives, with guns, with hot irons or even attacked while they are sleeping, all this done by their loving husbands.

Wife beating is rarely a one-time occurrence. In a study of Transition House residents, 31 per cent indicated they were beaten weekly or daily. Twenty-six per cent were

beaten at least once a month. And make no doubt about it, wife beating is frequently severe, and if you have ever seen someone who has received beatings as I have, you can be revolted by it. Of the women interviewed in the aforementioned study, one third had required medical care. Indeed, a large proportion of battered wives indicate they were beaten during pregnancy.

There are many myths surrounding the matter of battered wives and, like most myths, they cloud the real issues behind the problem. If I may, I wish to quickly dismiss some of these myths.

Wife assault is not due to a husband who is mentally sick, in most cases. The incidence of wife assault is too widespread to be the work of a few mentally sick men.

Canadian lawyers have women clients in all income levels and educational levels and in all cultural and ethnic groups who have been assaulted.

Wife assaults are not provoked by the woman, nor are they in some perverse way enjoyed by the woman. Broken arms, cracked ribs and concussions are not rewards women voluntarily aspire to.

The question often asked, especially by men, is, if conditions are so terrible, why doesn't an assaulted wife leave the home? Allow me to quote at some length from a fact sheet entitled, *Wife Assault in Canada*. It is by Support Services for Assaulted Women, a Toronto-based organization.

"Initially, an assaulted woman often stays because she wants her marriage to work and she hopes he will change. She may try harder to be a 'good wife.' Frequently, a woman thinks he does it because he is sick and so she tries to nurse him back to good health by giving him more love and understanding. When this approach does not work and she realizes she cannot handle the situation by herself, a woman may turn to others for help without success.

"Reports by Canadian assaulted women agree with the conclusion of a widely-cited American study. Agencies and most legal organizations are quite unprepared and unable to provide meaningful assistance to women who have been beaten by their husbands. She is left with no confidence in herself or the community.

"Once a pattern of violence has been established, leaving may be a difficult and risky option. A Thunder Bay survey found assaulted women are frequently too scared to leave. Sometimes violent husbands threaten to kill their wives if the latter try to leave. She knows if she stays he will

beat her, but if she tries to leave he may kill her. Also being on your own is very scary if you have never been on your own, or: 'I put up with it for the sake of the children. There was nowhere to go, nowhere to turn, no money to feed them, no alternative home to offer them.'"

In this context, I would like to comment on the performance of our so-called justice system in response to the problem of battered wives. In order to give a complete picture, I will address myself to the police, the justices of the peace, the crown attorneys, and thus, the offices of the Attorney General and the Solicitor General. Despite the high incidence of assaults against wives, despite the severity of many of these assaults, despite their wilful and horrendous consequences for the wife, the children of the relationship, and in the long run for society as a whole, wife assaults are treated differently from any other form of violent behaviour in our community today.

Consider, in the first instance, the training given to police with respect to their intervention in matters of domestic violence. I will quote again from the Ontario Police College's materials relating to family crisis intervention dated February 1978.

10:40 a.m.

"Frequent attention is drawn to the difference in police work between law enforcement and order maintenance. The former is a function which focuses on specific law violations with clearly defined guidelines. The latter is a more ambiguous and problematic police function involving the management of interpersonal behaviour with specific guidelines."

It is clear from the rest of this training manual that the police function in response to domestic violence involves the management of interpersonal behaviour. If I may summarize, the basic instructions given to the police require that they get in, calm the parties down and get out.

Of course, this approach ignores the realities of domestic violence, but then the term "domestic violence" is, for the most part, misleading. It is not domestic violence that occurs in the sense of two spouses fighting, but rather, in 90 per cent of the cases, it is the husband beating up the wife. Thus, to call wife beating "domestic violence" is like calling the old Roman indulgence of pitting Christians against lions a sport. Clearly, one party here desperately needs protection.

This leads to the second point. One must have an appreciation of the psychological impact of these assaults on the battered wife.

She is confused, frightened, emotionally drained, with little confidence in herself or in the community around her to help her out of that situation. Police intervention that stresses restoring the peace followed by quick exit provides such a woman with only temporary relief. She needs to be advised of shelters that can provide comfort and assistance—and they need to be there of course. She needs to be told of her legal rights; she needs to be assisted in asserting her legal rights.

In far more instances than they do now, the police should assist the wife in laying criminal charges by taking her to a justice of the peace, by explaining the procedures to her, and so forth. In reality, many police officers view the matter of wife assaults with some disdain.

It is the experience of many family lawyers that the police place a low priority on response to calls relating to wife beatings, and since their training indicates that, I suppose it is not surprising. Some calls wait for as long as an hour before relief comes. Some calls are never responded to. I have heard that one lawyer advises women clients, when calling, to tell the police there is a prowler in the house so as to ensure they receive prompt attention.

Women have similar problems when they intend to lay criminal charges. Justices of the peace are often unsympathetic to the plight of these women and view their stories with some suspicion. Should the woman get by this barrier, there is the problem of prosecution. Crown attorneys are not particularly helpful in these instances. Often the woman has to prosecute these cases herself because a crown attorney refuses to step in and prosecute. If charges are laid by the crown, there is often no bail order. If there is a bail order, it is not enforced.

Yet the police, the JPs and the crown assert that the assaulted wife is notorious for dropping charges against her husband after a few months. It is small wonder, given her psychological state of fear and insecurity, her concern for her life and for her children and the obstacles she finds through the whole law enforcement and judicial systems.

I would now like to turn to the issues which have been raised in the assembly during these last few weeks. The Family Law Reform Act provides for certain legal remedies for a woman, including nonmolestation orders, orders for exclusive possession of the house, custody and access orders with relation to their children and so on.



In certain situations a judge, given a violent background to a relationship, would wish a police force to be involved in the process and enforcement of such an order. The judge, having reviewed the history of the relationship, is in the best position to evaluate the likely potential for future violence. For that reason he would, and has, included directions to the policeman making the order.

I have quoted in the assembly from a letter to Ms. Marilynne Glick, a family lawyer, sent by the Solicitor General on January 9, 1980. I wish again to draw that to your attention:

"Dear Mrs. Glick:

"I wish to acknowledge your letter of November 5 regarding police policy in the enforcement of civil family orders, as well as training programs and guidelines for domestic disputes.

"The enforcement of civil family-law orders in cases of exclusive possession, custody, access, et cetera, is not a police responsibility, in that it involves civil process. The level of the court which issues the orders does not make any difference in these cases.

"In the past, some courts have directed the order specifically to a police force, but they are being persuaded to discontinue the practice. As with other civil processes, such orders are enforceable by the sheriff. It is only in cases where a breach of the peace beyond the capability of the sheriff is anticipated that the police should be expected to respond, and only by way of assistance to the sheriff."

I do not want to engage the Attorney General in the semantics of civil orders versus criminal matters. I am dealing with wives who are being beaten by their husbands. Again I ask, is the Attorney General not aware that the sheriff is a totally inadequate response to many of these matters? He does not know what to do with these orders. He needs instruction from the woman's lawyer. He has no training to deal with these situations on short notice. He is not at all available when most wife assaults occur.

Why should the Attorney General accept the Solicitor General's view if he wants to exclude the police in the enforcement of these orders, especially when they have been directed by a judge to so intervene? Moreover, not only do I want to know why courts are being persuaded to discontinue the practice of including directions to the police in these matters, I also wish to know how the

Attorney General is going about persuading our courts to discontinue this practice. If there is anything that is somewhat self-righteous in our assembly, it is when the Attorney General stands up and says, "But I cannot interfere with the autonomy of the court," except, apparently, in this case.

In the previous estimates, the Attorney General briefly commented on the issue of battered wives. He stated that while the causes of wife battering are manifold, the lack of legal protection for wives is not one of them.

I would suggest that all the laws in the world cannot help battered wives if the police, the crown attorneys and the court are precluded from enforcing these laws. What is it about a wife that results in her receiving less protection from our justice system than other persons?

I would like to say a few words about the Ontario Legal Aid Plan. I take heart from the Attorney General's comments during the last estimates when he reasserted his commitment to the plan, a plan which, in his words, "ensures that poverty is not a bar to the exercise of the fundamental legal rights and freedoms." I fully endorse that sentiment and trust that all members in this committee share that view.

Almost every public program has one major barrier and that is the matter of its costs. The objectives of any public policy must be tempered by the ultimate realities of the fiscal constraints impeding government actions. I recognize that our aspirations for a just and equitable society must be balanced by budgetary considerations. The issue is not whether we can finance all the programs to which we may wish to allocate funds but, given hard choices, whether we can identify our priorities.

In this light, it seems to me that we could do far better with respect to the provision of legal aid to our population. In times of economic difficulties, I would suggest the people are particularly needful of legal assistance to protect them against the harsh economic realities that bear down on them.

10:50 a.m.

People need assistance against unscrupulous landlords, intransigent bureaucracies, heartless collection agencies and defrauding swindlers. Persons caught up in the criminal system similarly need protection against unfounded criminal charges or unusually harsh sentences, especially when the economic consequences may result in despair rather than deterrence.

I understand that the budget which had been submitted to the Attorney General's office by the legal aid committee was reduced from \$34,665,000 to \$31,203,000. I would like some confirmation as to whether that is correct. That is my understanding. The amount approved by the Management Board of Cabinet represents an increase of five per cent, I believe, over the previous year. I would like the Attorney General to comment on where he expects the cutback in the budget to occur.

Let us first look at the certificate side of the plan. As we pointed out in the estimates last year, the legal aid tariff was increased on April 1, 1979, for the first time in six years, I believe. The 20 per cent increase—less than four per cent a year—was intended, as the Attorney General put it, to halt the flight of lawyers from legal aid which appeared to be occurring.

Moreover, according to the Attorney General, and I quote: "The Law Society brought forth a number of thoughtful proposals for increasing the efficiency of each legal-aid dollar and for improving administrative controls on expenditures. One of these administrative controls was the setting of time limits on the preparation of civil legal aid matters."

I find this provision can result in even greater inefficiency, because it provides a disincentive for lawyers to settle civil cases, for example. Should a lawyer be preparing for a complicated custody matter, as in an example given to me, which may involve all sorts of expert witnesses and two or three days' court time, he or she, it should be anticipated, would spend a fair amount of time for preparation. Should the matter be settled the day of the trial, he or she would get one day's court time and an amount for preparation proportionate to one day in court, as opposed to what the case actually cost the lawyer.

In fact, what is happening is that legal-aid lawyers are settling such cases but are not receiving equitable compensation from the plan. Moreover, the different tariffs between the different courts adds to the problem. Is the plan encouraging the lawyers to clog up the higher courts?

With respect to the time restrictions, I am concerned that the benefit of a higher tariff may well be nullified. Has any study been prepared to compare what a legal-aid lawyer would receive under the old tariff for a given piece of work as opposed to his or her fee under the new tariff with these restrictions? If the amount is roughly the

same, then clearly there was no increase in remuneration. How will that avoid the perceived flight of lawyers from legal aid?

Further, I understand that the plan suffers a budgetary shortfall before the end of each fiscal year, and that accounts payable at the end of March are held up until the new funding arrives in April. Certainly with a tight financial situation, the plan should not be put under greater strain. Is the minister not concerned, given the present amounts allocated, that the plan may not be able to provide the same level of service as it has in the previous year?

What is this plan to do, given its statutory obligation to provide legal assistance in a number of defined circumstances? Should the plan, as has been suggested by one lawyer that I know of, approach the Toronto-Dominion Bank for a loan with the high interest rates of today?

I have concern for the lawyers who provide their services on the basis of legal-aid certificates. They are often at the lower end of the income scale in the profession. Given that this is so, and given that they are required to donate a portion of their tariff fee back to the plan and, further, that this tariff fee is relatively low to begin with, could the Attorney General indicate why these lawyers should bear the brunt of the legal profession's portions of the legal aid plan?

I would like to hear the minister's comments on the idea that this kickback scheme be abolished and be replaced with a mandatory contribution from all lawyers, be their practice in Parkdale or on Bay Street.

I am worried, as well, about the financial eligibility to the program. I understand there are two schedules, one that is very similar to a straight means test and another that includes a number of discretionary factors. As guidelines may restrict eligibility to the program, I would ask the minister to satisfy me, again, that the present tests are not more restrictive than the previous practice.

Has his ministry or the Ministry of Community and Social Services done any studies to predict the impact of these new financial criteria? I would like the information regarding the new legal aid application form, which I understand has just come out, and I would like to receive a copy of this form.

With respect to the certificate side of the program, I am worried that we are actually cutting back the service level. In this context, can the minister tell me how the plan can accommodate the shortfall in funding which his ministry has created—and I would have to say through no fault of his own?

Let us turn to the community clinic side of the legal plan. For brevity's sake, let me read to you from the excellent report of Mr. Justice Grange on clinic funding with which everyone is familiar. I can only point out that he has said: "I suppose it is only realistic to concede there will never be enough funds and that the clinics, being dependent on the public purse, must always be subject to consideration of political priorities." His quote on that is quite appropriate, it seems to me.

The other aspect of the plan is the matter of the student legal aid societies and their funding. I am concerned that the funding for these particular clinics, if you like, really flows from the Experience program which is not under the Ministry of the Attorney General.

I am concerned that, basically, the payment to the students is in the summer. These students are really, then, the backbone of the operation as it proceeds after the summer. If these programs are being cut back through the Experience program, I perceive problems with the students taking on those responsibilities without fee after the summer is over. I would like some comments from the Attorney General on that.

The last matter I want to make some reference to is the role of the Law Society of Upper Canada. I imagine that everyone has views about the law society. Some see it as a prestigious institution, others view it as a cabal. I fall somewhere in between.

I would like to comment, firstly, on the procedures adopted by the law society in response to complaints by dissatisfied clients of lawyers. It seems to be the general impression of most people that, apart from cases where a lawyer has dipped into his trust account, the law society is not particularly meticulous in its investigation of complaints.

I had a case recently where a couple complained to the law society that their lawyer had acted in a conflict of interest situation, resulting in \$20,000 being passed to another party who was equally a client of the same lawyer. The law society, in its answer to my leader, made this statement, "The law society does not have the facilities or the jurisdiction for determining credibility, which would appear to me to be the sole issue now."

11 a.m.

In many cases where a complaint is filed, there is a dispute as to the facts and therefore an issue of credibility to be resolved. If the law society is entrusted with the jurisdiction of overseeing the activities of the legal profession, surely it must have the

jurisdiction to resolve issues of credibility arising out of complaints. If it has that jurisdiction, surely it is incumbent on the law society to structure its complaint resolution facilities in such a way that it has the resources to investigate complaints and a forum in which issues in dispute may be adjudicated upon.

It seems to me all these fundamental observations flow from the statutory jurisdiction of the law society, but it is what the public expect from a professional regulatory body and it is a matter that should be of concern to the Attorney General.

The last item I would like the Attorney General to comment on at some point is the matter of advertising. I'm talking about advertising as a consumer service. I recognize it isn't possible for a lawyer to document in precise terms what the fees are going to be; one doesn't know what the difficulties are going to be. It does seem to me there ought to be an opportunity for the public to have some kind of figure of the hourly rates or whatever they are, so when they are thinking of approaching a lawyer they are not, as many who come to me quite clearly are, terrified of getting involved with a lawyer because they can't afford it.

I would like the Attorney General to comment on what we could do as a kind of consumer protection so far as lawyers are concerned. I don't want the Attorney General to raise the spectre of cancan chorus lines or something to advertise the lawyers involved.

It has also been brought to my attention that back in June 1979 the Attorney General instructed Mr. Takach to look into the complaints of Mr. Thomas Henderson concerning police harassment. I don't think I need to remind anyone here of that case. Has that investigation been completed? Could the Attorney General provide us with copies of it? What happened to that investigation?

I also note the Attorney General directed his crown attorneys to press for harsher sentences for people found guilty of possessing unregistered firearms. Could the minister indicate what follow-up has been done in that direction, and whether his direction has been followed, and with what consequences?

I would ask the Attorney General to provide me with two studies which I haven't received: a study prepared for his ministry by Emile Pukacz entitled, Court-Related Costs of Policing, and a study prepared in 1978, I believe, commissioned by a joint committee of the law society and the ministry when a number of projects were proposed



for the Ontario legal plan, including the research facility; the mentor program; the panelling of lawyers for the criminal aid system; and so on. I think Mr. Linden was a co-author of that study.

**Hon. Mr. McMurtry:** Doug Ewart.

**Mrs. Campbell:** I don't have it and I wonder if we can get it.

The other matter, which I hope we may have some comment on again this time, is the clarification of the situation I've been trying to clarify with your deputy of the law of standing and the status of it. I have now received from Mr. Leal the notes of one case in which standing was granted, I understand. I still think that is a matter of some importance for us to look at.

So that I won't get back into the legal aid plan, I do have now the particulars of the case to which I've referred so many times and couldn't remember the gentleman's name. It's Durhan Yonar. This was the case where the legal aid certificate to this gentleman was refused because, "You are covered by insurance and your insurance company should be obliged to pay the costs of your defence."

He was, if one can put it that way, covered by the fund. Remember, I told you that this man had never had his day in court. He believed, as a result of this, that he would be covered by the lawyer representing the fund. Of course, that was not done and a settlement was made. The man never had any assistance.

I will hand over that file if I may be sure of getting it back. I'm never sure that I'll get one back to somebody either. It wasn't a lack of trust. It's just that time goes on and it gets buried—on my desk as well.

**Mr. Chairman:** For the information of the committee, Mrs. Campbell started her address at 10:25 a.m. It's now 11:06. We'll have an opening statement by Mr. Warner and then I'll ask the Attorney General, if time permits, to address both of you and your comments.

**Mr. Warner:** Like Mrs. Campbell, I wish to raise a couple of specific matters and mention a few others in passing. I wonder if the Attorney General would like the good news first or the bad news?

**Mrs. Campbell:** He'd like only good news.

**Mr. Warner:** He'd like only good news. But he's going to get some bad news this morning. I'll start with the good news. First, it's been about a year now since I've had this portfolio, and I must say that—

**Mr. Chairman:** Is that good news or bad news?

**Mr. Warner:** That's good news—at least I think it's good news.

The level of co-operation I have received from the staff of the Attorney General's department has been first rate. No matter what the situation is when you pick up the phone and call and talk to someone, they're always willing to help and assist in whatever way they can. I've been very pleased with the co-operation I have received and the level of expertise that seems to be available in the Attorney General's department. I appreciate it.

I also appreciate some of the things the minister mentioned in his opening statement; in particular what appears to be the very good development of the French-language services throughout the province. It seems to be proceeding at a steady pace and increasing throughout the province. I commend you for it. I think it's an absolutely first-rate initiative that you have taken over a long period of time and appear to be most committed to.

That will be of assistance not only to the people of Ontario, but I think, ultimately, as we go through the constitutional arguments or we expect to have a reframing of the Canadian constitution, the people of Ontario and of the country will be the better for the kind of effort that you have put into the development of French-language services.

The thrust to give the new provincial court (civil division) in Metro Toronto—and I presume ultimately throughout the province—the greater jurisdiction for items up to \$3,000 is—well, I'll wait to see what happens. My guess is it's a good step forward.

You have been advertising, lately, the new justice procedure for traffic tickets and so on, that one can write in an explanation. You've been vigorous in your ad campaign. I received about 100 of those little pamphlets in my office.

Some lady phoned and had some complaints about the judicial system. We had a long chat and I said, "I think these new procedures would be very helpful."

She said, "What new procedures?"

I said, "There have been full-page ads in the newspapers."

She said, "I don't take the newspapers because I don't believe anything that's in them."

Maybe she doesn't read the Globe, the Star or the Sun.

11:10 a.m.



I said: "I'll just drop one of these little pamphlets to you and that will explain the procedure. If you have any more questions, call me back."

I expect to follow up on this with quite a few constituents. When these new pamphlets come out I generally include them with my riding report so people can get some idea of what new procedures are available.

The children's law reform package of legislation we expect to receive, I gather is going to be good stuff generally. I hope it includes my strong recommendation that children have the ability to have a lawyer in court, that they will definitely have that opportunity, so we can guarantee that every child will be legally represented in court.

That's pretty well most of the good news. Now for the bad news.

I must admit that one of the most disturbing times I have had while in this portfolio came a couple of days ago when I picked up the Globe and Mail, as I do each morning, and looked at the front page story which said that over a six-month period 17,000 people needlessly spent time in jail; not even a year, half a year.

That's bad enough, but what compounded the situation was a remark by a minister of the crown blaming the lawyers. You can blame lawyers for a lot of things, and people generally do, they are often a terrific target, but is it conceivable that 17,000 people could sit in jail needlessly over a six-month period of time and it be the fault of the lawyers? It doesn't make sense to me.

If I recall correctly, it was in the Saturday edition. First thing Monday morning, about 6:30 a.m. I did up a press release, I guess largely out of frustration but also out of some anger about the situation; two aspects of it: One, that we have this number of people sitting in jail when they shouldn't have been there, but also that the Provincial Secretary for Justice (Mr. Walker), would dump all over the lawyers for that problem. It's unbelievable.

I then tabled a series of questions for the Order Paper and I would hope that they have been brought to your attention, Mr. Minister. I want to know, of those people who were granted bail in this past year, how many pleaded guilty? And, of those people who were refused bail or were unable to meet the bail requirements, how many pleaded guilty?

I want the figures because I suspect that what we end up with is people pleading guilty because they know that's the quick

way out. They know what's going on. They are going to end up sitting in the Don Jail for three or four months awaiting trial and for a variety of reasons are not going to get bail. They know that, so why not plead guilty and get the thing over with as quickly as possible? In some cases one might end up with a three-month suspended sentence. That's got to be better than sitting three months in the Don Jail.

I have written to the minister previously on the matter of bail procedures. The member for St. George has fought for the cause for much longer than I. I wrote to the minister, I believe back in January of this year, asking why we cannot have a set of bail procedures that's available to the public, so we'll know what they are and that there's an appeal to that—

**Hon. Mr. McMurtry:** There's the Bail Reform Act.

**Mr. Warner:** —so if you are picked up by the police and taken to the Don Jail, you will know exactly what procedures are involved in granting the bail and, if your request for bail is turned down, the reason why it's turned down and that there is some way to appeal that. It seems to me that there are not set standards against which the justice of the peace can make his judgement.

Maybe I'm wrong, but that's the appearance it gives to me, and from discussions I have had with prisoners at the Don Jail that's the impression I got from them and from some of the lawyers as well. I always stand ready to be corrected. If I'm wrong, tell me and tell me where I'm wrong. But I would contend that in this city and perhaps throughout the province, if someone is picked up and taken to the Don Jail, it is very likely they will not know what the procedures are, what the standards for bail are. Neither will they be given precise reasons as to why they are turned down or why there is no appeal to that. There's a darned good chance that a person can end up sitting longer in the Don Jail than any sentence they would have got. Of course, in many cases they are acquitted anyway.

I want to have some breakdown over the 16,000 people. That's just over six months, and it would be very helpful if we had that report. I would ask that you table the report upon which the story was based.

How many people who were in jail in 1979 awaiting trial and then were either acquitted or not jailed subsequently lost their jobs? You may not have that information, but if you have it I would like to know. I would imagine there are a number

of people who, by the mere fact that they were detained in jail, lost their jobs, and with that you start the process of family breakdown. The guy is locked up in jail and later on is acquitted or found not guilty and, therefore, is not jailed. But in the meantime he has lost his job. We have, in this city, high unemployment. Where does he go to get a job? What of the social consequence of actually having been in jail in the first place?

So, following up on the report, I would like to know how many of those people have lost their jobs, and how many of the people who were in jail awaiting trial were there because of police detainment orders.

**Hon. Mr. McMurtry:** What are police detainment orders?

**Mr. Warner:** The police want the man detained.

**Hon. Mr. McMurtry:** They have rights under the Criminal Code of Canada and the Bail Reform Act. This is all public legislation passed by the Parliament of Canada. The police have the right for a show-cause hearing.

I just want to make an aside—I don't want to interrupt you—to say that 99.99 per cent of the written complaints I get are about people being out on bail who shouldn't be.

I can just say we'll discuss this. Unfortunately, I didn't see this wonderful Globe and Mail story. The headlines are nonsense, but we'll get into more detail about that.

**Mr. Warner:** I understand your point about the letters. I get them too. I bet they didn't come from any of the people who needlessly spent time in jail.

**Hon. Mr. McMurtry:** I just want to make it clear that it is totally unsupported by any evidence I've seen.

**Mr. Warner:** Then perhaps we could have the internal report that is mentioned in the Globe and Mail story. You wouldn't accuse the Globe and Mail of being inaccurate?

**Hon. Mr. McMurtry:** No, never. I don't accuse any newspaper of being deliberately inaccurate. Sometimes they are just not properly informed.

**Mr. Warner:** Then properly inform the Globe and Mail and all the rest of us by giving us the report.

**Hon. Mr. McMurtry:** I'm even prepared to admit there may be some honest confusion in the minds of some people over at the Ministry of Correctional Services as to what the system is all about.

11:20 a.m.

**Mr. Warner:** Okay, that's fine. Two ministries can attack each other if they wish.

All I want is the internal report that's referred to. If the Globe and Mail is totally inaccurate, which is highly unlikely—

**Hon. Mr. McMurtry:** I'm not saying they are totally inaccurate at all. I'm just saying what you have suggested, and you have cited the Globe and Mail, that 17,000 people are improperly in jail—"needlessly in jail" means to me improperly in jail. I think you and I would agree that that's basically what is referred to—I just say that's utter nonsense.

**Mr. Warner:** The way to help clear the issue would be for us to have made available that internal report which is referred to. If there is no such report perhaps you could let us know about that as well. If there is a report, and I suspect there is, it would be helpful if we saw it.

The other major item—and I must admit I am astounded. In general, your opening statement was positive. It has some good things in it, as I mentioned. What happened to the complaints against the police bill for Metro Toronto? It's disappeared.

**Hon. Mr. McMurtry:** It hasn't disappeared.

**Mr. Warner:** There's no mention of it in your opening statement.

**Hon. Mr. McMurtry:** That's the Solicitor General's bill.

**Mr. Warner:** Oh, the Solicitor General. Right; a different person.

**Hon. Mr. McMurtry:** It was quite clearly introduced by the Ministry of the Solicitor General.

**Mrs. Campbell:** Those two agricultural bills were introduced by the Attorney General; those on trespass and occupiers' liability.

**Mr. Warner:** Maybe I missed something yesterday. That bill hasn't been tabled?

**Hon. Mr. McMurtry:** It hasn't been re-introduced.

**Mr. Warner:** I recall the choice very clearly and I was disappointed at the time. You made a trade-off prior to Christmas between discussion of the two bills respecting occupiers' liability and protection against trespass to property, and the complaints bill. There wasn't time to do all. We had to do those two or the other. You chose the occupiers' liability and trespass bills. They had higher priority than the complaints bill. We dealt with the occupiers' liability in January, if I recall correctly. We spent six days on it. The bill, of course, died.

**Hon. Mr. McMurtry:** That wasn't my bill.

**Mr. Warner:** It was your legislation.

**Hon. Mr. McMurtry:** I don't dictate to the justice committee what they hear.

**Mrs. Campbell:** It wasn't the justice committee.

**Mr. Warner:** No, it wasn't.

**Hon. Mr. McMurtry:** It was the resources development committee.

**Mrs. Campbell:** That's right; two agricultural bills.

**Mr. Warner:** It was requested that we deal with those bills and we did. I introduced a bill on behalf of my party on complaints procedure for Metro Toronto prior to Christmas. I reintroduced it the first day the House was sitting. I don't know what would have prevented you from reintroducing your bill, but it's not on the Order Paper. All I can take from that and the fact there is no mention is that it is no longer a priority with this government. I'm very disturbed about it.

**Hon. Mr. McMurtry:** Let's just clarify that, although that is clearly a bill that is the Solicitor General's bill. The response to the bill was somewhat mixed. I want to make it clear that it is a high priority. Myself and members of the Ministry of the Solicitor General have spent a lot of time meeting with a number of community groups to discuss the bill with them.

For example, as a result of discussions with Mrs. Campbell and others in the Liberal caucus, there's one basic amendment that I'm thinking about, to expand the authority of the complaints commissioner. This is the sort of thing we're trying and it's something I'd be happy to sit down and talk to you about. Before reintroducing it we're simply trying to ascertain whether we cannot establish some greater common ground, that's all.

There's been a lot of time spent explaining the legislation to various groups who perhaps are a little confused as to just what it does represent. I just want to make it clear at this stage that it is a high priority. We want to reintroduce a bill that we think has some hope of passage. That would be my priority, rather than have a bill that is not going to achieve any reasonable consensus from both sides of the House.

**Mr. Warner:** It's been four months since that bill died with the prorogation of the House. I think it's safe to say that from our standpoint, your bill compared to ours, there is one major difference. There are some minor things. There are some other things that can be ironed out. The major difference is the independent investigative aspect of the complaints procedure.

We have supported the notion of an independent investigative procedure and you have not. Therein lies the difference. Whether that can be accommodated, I don't know. What I do know is that we continue to have serious problems and it is not helpful when there is no legislation. We need something upon which to focus a debate. I, frankly, am very disappointed that it was not introduced the first day the House sat during the new session so we could get on with the debate about it.

I don't know what we're going to end up with. You're the government. You introduce your legislation. We'll debate it and we'll try to come up with a good bill and a good procedure. At this point there's nothing to focus around other than the bill which I introduced. Obviously, as a private member's bill it is not going to be debated; I'm number 52 on the list.

I worked it out on the calendar one day. I would have to wait until the fall of 1981. We'll likely have an election before then. They'll reshuffle the numbers and I'll be 125. That's the only focus for a debate at this point, my drawing of number 52.

All I can do is pressure that you bring in a bill and again make a very strong pitch that you have an independent investigative aspect. Otherwise, it will not work. It will not enjoy the confidence of the ethnic communities in Metro Toronto particularly. It's not just me who has delivered that message on occasions to the good Attorney General.

There's another matter, a third matter, which is very important to deal with. That stems from the court decision respecting "Lite" beer, the Labatt's case, as a result of which, if I understood it properly, the Supreme Court then tossed out the cases it was going to hear about all those stores who mixed the beef and the pork—you'll recall the 57 stores or whatever—because it's a provincial jurisdiction now. They're throwing it back to you.

The court decision regarding the beer, if you recall, was to the effect they didn't have jurisdiction because there was no inter-provincial trade involved. In each case, Labatt's was producing its beer in the province in which the beer was sold. Although they were being challenged over the use of the term "Lite" on their packaging, the federal court could not deal with it. That was their ruling.

It seems to me that it has some long-range and severe implications for the consumer in each of the provinces. It means that the "Canadian standards" may not any longer



apply in some cases. Where a company can produce a product within the province and sell it within the province, the jurisdiction over the labelling and the packaging and so on will be provincial.

I'd like to know if you will now proceed to prosecute those stores which were involved in hoodwinking the public in mixing the beef and the pork, because the Supreme Court isn't going to deal with that matter now. I'm not sure about this, I don't know about all of them, but most of the stores were situated in Ontario. Over 50 of the 57 were. I think you should take them to court.

11:30 a.m.

If it cannot be dealt with in the Supreme Court of Canada, deal with it here. They should not be allowed to get away with that. There is no way they should be engaged in ripping off the public. The public deserves to be protected.

Beyond that, it seems to me if the implications of that Labatt's decision is that we may have some problems over standards and labelling and products, then that would be a very serious and tough job for the Attorney General's department to do; to make sure we are going to come up with some consumer protection that will stand up in court.

I am most pleased that Mrs. Campbell raised the matter of wife assault. It is an issue, quite frankly, that has been dealt with by very few, if any, members of the assembly, other than the member for St. George. It seems to me the entire legal system should be supportive of the wife who is assaulted. The curious distinction that is made between an assault upon a stranger and an assault upon a wife has no place in civilized society in my view.

What Mrs. Campbell raises is a real issue. I guess every member of the assembly can attest to that from their own case work. Women who come in to see me tell me about being beaten, and I say, "Why don't you lay a charge?" I have had women say to me, "Well, I tried that but the police were not interested." In fact, one policeman told the woman that she could not lay a charge because it was in the home. She was beaten in the home so she could not lay a charge. Incredible! Women do not know what to do. There is nobody supporting them. They are by themselves.

A lot of it, I think, or some of it when you try and grapple with it is, why doesn't the woman press the charge or why doesn't she leave? One often gives advice to women, "Leave; get the hell out of the house and

get off on your own." This sense of insecurity—

**Mrs. Campbell:** Most of them don't have tents.

**Mr. Warner:** Yes. "Where am I going to go? I don't have a job. I have been dependent upon my husband's income. How will I survive? He will come after me. If I lay a charge against him, he will come after me and he will get me."

I am not suggesting that you alone can solve the problem, but I just think there is one thing you can do and that is to remove this distinction between assault on a stranger and one against a wife.

**Hon. Mr. McMurtry:** There is no such distinction in law.

**Mrs. Campbell:** Just in practice.

**Mr. Warner:** Just in practice. I suppose in the types of sentences. Maybe you can give us some comparison between the types of sentences that are handed out against wife beaters and those for common assault.

I look forward to the report of the professional organizations committee. I am assuming that report will focus around the essential element of self-regulation. It seems to me, particularly from remarks that Mrs. Campbell has made, that I would agree we should have a stronger relationship, or a more direct relationship, between the Law Society of Upper Canada and the Legislature for the review of procedures and the review of complaints for investigative processes that Mrs. Campbell talked about. The law society will not likely be overly thrilled about that.

There are a lot of different avenues available. We have an Ombudsman's committee here that is empowered to review the operation of the Office of the Ombudsman. The Ombudsman reports on a regular basis and the committee examines the report and raises questions.

**Mrs. Campbell:** Endlessly.

**Mr. Warner:** Endlessly. Maybe that type of relationship with the law society would be appropriate in as much as, I suppose, the chief function of the Legislature of Ontario is to make laws.

The lawyers have a job in trying to interpret the laws and protect their clients, and in view of the law, wouldn't it make sense to have a reporting mechanism back to a committee of the Legislature so that there is some appeal to the people who take their complaints to the law society, other than the guy who has been caught with his hand in the cookie jar, outside of that business?



What kind of investigation can be done, what kind of complaints, what kind of appeal? Right now it is the law society that is self regulating.

I suspect that whatever decision is made about the lawyers with respect to self regulation, it will be mirrored in those other three professional organizations the committee was examining, the engineers, the architects and the chartered accountants.

But I look forward to that report and I would hope there will be an opportunity for a full discussion and examination of the report in this committee or some other—preferably here.

The mind-development cults: I look forward to that report as well because it would seem to me, unless I am totally wrong, we are going to need some legislation. It would seem inescapable to me.

I would like to make a brief comment about trespass and occupiers' liability. I sat in on that committee and I think the Attorney General might agree that it may have been good politics to have brought forward those farm bills, but it was bad law. It is unfortunate that Mrs. Campbell was not there. She would have made some—

**Mrs. Campbell:** I wasn't on that committee.

**Mr. Warner:** I know. You cannot be on every committee, but you would have made some good arguments.

**Hon. Mr. McMurtry:** What you are saying basically, Mr. Warner, there, is that you disagree with the majority of the Legislature.

**Mr. Warner:** No. You and I both know how that thing was structured. You know the purpose of it. It was politically good to appeal to the farmers of Ontario. That is your perspective and that is fine.

**Hon. Mr. McMurtry:** That is not my perspective at all.

**Mr. Warner:** But the legal aspect is a very poor one, and I think you know that as well as I do.

**Hon. Mr. McMurtry:** I obviously disagree very strongly with that remark.

**Mr. Warner:** I watched Inco come in and get exactly what they wanted out of that bill. And there are abandoned properties up there now of which they have quite a few. Some poor soul will wander on to that abandoned property, fall down a mine shaft and the company will not be held liable because of that bill. They got the amendment. They came in and had an amendment

drafted they proposed that went through the committee, and that is the state of the law now in Ontario.

I can express my frustration that you are at your best when you turn your mind to matters of law and put them before us. And you do that very well. Please don't bring forward bills just for political purposes like the farm bills disguised as trespass and occupiers' liability. It does you no good.

The legal aid system; I share many of the concerns that Mrs. Campbell raised. It seems to me that she has put the right frame, the right perspective, on it. The economic times are getting tougher. We have rising unemployment again, and the gap between the rich and the poor grows. It is getting wider. The people at the bottom are often the ones who are caught up in the justice system; they are the ones who will need legal help, and they are the ones who cannot afford it.

Your legal aid system, which you have stood by, and which I appreciate, has helped those people. What I am afraid of is that with the crunch that will come from the budgetary crunch on the government, that legal aid plan may suffer and may become more restrictive. If it does, there will be fewer people who will get the help that they require.

11:40 p.m.

For example, Mrs. Campbell mentioned that the budget of approximately \$35 million has been cut to \$31 million. Why? Can we have a detailed explanation as to why that \$4 million was cut from the budget? Those are approximate figures; I may not have the exact figure, that's approximate. It is the last place to cut, in your ministry, in my view; it is the last place to cut.

The legal aid system, in fact, should be expanded. We need more community clinics. We need more of the store front operations throughout the province where people can get help. We do not need to be in a drawing back period at all. We need to be expanding.

It is not easy to do and I understand you take all your requirements and you go to the management board and you fight for what you can. I understand that. I understand the revenue problem this government has and I know why it has it. That is a long-standing philosophical argument about which you and I disagree and on which we will never agree, so there is no point in going into it. But it has something to do with how you support the economy of the province and our natural resources.

Until the people of Ontario get control of those resources as opposed to the Americans and other countries who now own them, we will never have the revenue we require to run the services that the people deserve. However, that is up to your government in total, not you personally. All I can do is ask that when you get to the stage of cutting, please don't cut the legal aid plan. Do everything you can to try to preserve that, and to expand it wherever you can. If you can give us a detailed explanation of why the money was cut, I would appreciate that.

Finally, Mr. Chairman, as we go through the estimates, there will be particular things that I wish to raise. But I just wanted to make the overall observation on certain items that were disturbing, that I find very disturbing. I would put in a plea again this year, as I did last year, as Mrs. Campbell did, that I do not honestly believe you can continue in the conflict-of-interest role you play.

You cannot be the boss of the courts and the boss of the police at the same time and hope to provide a balanced view of justice. Please choose one or the other. You can do either of them admirably, quite frankly, because you are a very talented individual. But I honestly believe it is a conflict of interest for you to hold both portfolios. You should request of the Premier that you have one or the other portfolio and that he appoint someone else, hopefully not Gordon Walker—I have had too many run-ins with him, I guess—but somebody else.

Mr. Havrot: Too smart for you, that's why.

Mr. Warner: That concludes my opening remarks.

Mr. Chairman: Thank you, Mr. Warner.

Mr. Warner used 37 minutes, Mrs. Campbell 41. That is fairly close so we will call it a draw for purposes of timing and equalizing out.

No doubt the Attorney General wishes to address himself to both of the opening statements.

Hon. Mr. McMurtry: Thank you, Mr. Chairman and colleagues. Once again I find the submissions of my critics to be of great interest. While we do not always totally agree on many matters, I reiterate that I believe the process is a very valuable one and very important to the administration of justice in this province.

I will deal relatively briefly at this point with a number of the issues that have been raised by both opposition critics on the understanding that some of these issues we

will be coming back to during the course of the estimates, on the understanding that I will require some additional information before being able to respond to the extent I'd like to with respect to some of the issues that have been raised, also on the understanding that during these estimates we have generally enjoyed a fairly unstructured approach to the discussion of some of these issues rather than trying to confine them rigidly within specific votes.

I've never objected to that procedure because I think it provides, promotes, encourages a more frank exchange of views. I assume that we'll follow roughly the same format, appreciating, of course, your difficulties, Mr. Chairman, in getting the various votes resolved during the 20 hours that have been allotted to this committee.

Mr. Chairman: If I may comment on that, Mr. Attorney General, my main concern is not to get, as you say, various votes passed. My concern is that in the past the Attorney General's estimates—and perhaps to a lesser degree, the Solicitor General's estimates—have been estimates in which mainly lawyers and the critics and the minister participated. I feel that these are such important portfolios that they shouldn't be left to only the legal profession who happens to get elected to this House, that if we can involve more backbenchers, if you want, or more members of the House in these estimates, it will be of benefit to us and to the public.

That is why I'm interested in at least having some time framework so that the member who cannot be here for all of the estimates at least knows that if he comes in on a particular day with a particular problem, he can raise it; that he has some certainty it will be dealt with at a particular time. Within that, of course, we can be as flexible as the committee wishes to be.

Hon. Mr. McMurtry: Mr. Chairman, dealing in roughly the same order that the matters were dealt with by my critics, first is the issue of the conflict of interest or the perceived conflict of interest. Mrs. Campbell emphasized the perceptual aspect more than the reality of it. I appreciate that approach because I regard it more as a perceptual matter. I don't wish to prolong this debate unduly as we've spent some considerable degree of time on it both during the estimates last time and, to some extent, in the Legislature.

It's interesting to me that eight of our sister provinces have taken the view that the Attorney General, because of his or her

overall responsibility for the proper administration of justice, must maintain the accountability for both the traditional role of the Attorney General and the proper supervision of police forces. Again, this was an issue that was raised by opposition critics, as I've said before, on several occasions when the ministries were separated in 1972—I think it was—and the opposition parties objected on the grounds that they felt the Attorney General should have the responsibility of maintaining the overall accountability, and should have some direct accountability in so far as the police are concerned.

Once more I want to make it clear that I don't have any particular interest in retaining more than one portfolio. I again will await the wisdom of my Premier. But I have to say that I reject the contention that there is a conflict.

11:50 a.m.

I appreciate the perception. It's a matter that does concern me. I think it's unfortunate there may be that perception in some quarters because I don't think it should exist. Whether he is the Attorney General alone or holds a second portfolio, the Attorney General's fundamental responsibility is to the proper rule of law and the administration of justice. All considerations must be subservient to that overall responsibility to the law of the land. In exercising his responsibilities, as this particular Attorney General does as Solicitor General, the responsibility is the same.

Again, if there is a separate Solicitor General, I reiterate, the Attorney General must of necessity be involved in police forces and the conduct of police forces across the province. Even if there is another individual as Solicitor General, an Attorney General cannot ignore the responsibilities in that area because they touch so vitally on the administration of justice.

So there is a clear overlap which, looking at it quite frankly from the other side of the coin, I suppose given individuals of differing views might very well provide some tension that might not always be desirable. I don't say that that would necessarily happen and certainly it didn't happen with my predecessor Solicitors General, notwithstanding our overlapping responsibilities. It didn't provide any practical problem, but certainly the potential for conflict was there.

Regarding the matter that both critics raised—Mrs. Campbell in some detail—of domestic violence, there is no question that this is a very serious social problem as well as a legal problem. I guess it is representa-

tive of a social malaise that has increased in so many areas of society.

When we're talking about the increase in violence generally, I don't think anyone can be anything but appalled when they read of domestic violence. It astounds me that human beings in a so-called civilized community can be capable of such viciousness, as they are, in the family setting. For example, as a parent—as we all are—how one can perpetrate the brutality that is visited upon children never ceases to shock and dismay me. It reminds us all that the veneer of civilization is pretty bloody thin at times when people can be capable of brutalizing the ones that they should feel most protective of. I can tell you it is something, as a citizen of the community, quite apart from any other responsibilities, I find distressing, depressing and very disturbing.

The issue that has been raised as to how the administration of justice can deal with this, of course, raises some very difficult issues. I think we all recognize that it's basically a social problem and most of the solutions are going to be found, if they're going to be found at all, outside of the administration of justice. That doesn't mean to say for one moment that the administration of justice doesn't have an important responsibility, but the best possible administration of justice is not going to substantially solve such a deep-seated social problem.

I, for example, would like to see the social resources more adequately prepared; resources provided to a greater extent, whether by counselling, shelters, et cetera, to relieve the situation. Part of the problem of course, may just be related to education, but I think a good deal of it relates to the unhappy tensions that modern society has produced which, in turn, produce a great deal of alienation. People can become so frustrated and disturbed with their lot in life that they will lash out at society in general and, for some peculiar reasons that are better understood by psychiatrists and psychologists than by lawyers, they tend often to use the people of whom they should, again, be most protective as the most convenient target. I can't think of any other aspect of human existence that is more disturbing than the tragic phenomenon of domestic violence.

Mrs. Campbell: Could I just insert something at this point? It seems to me that in 1973 when I came into the House, almost immediately thereafter we started the discussion of child abuse. Much of the same statements were made, with respect. I can remember comments of the member for



Cochrane North, and we even got a meeting to see what we could do, but there has been some movement in that area. We do seem to have taken some legal responsibility in the matter of child abuse and we seem now to be at the same position that we were in in 1973 as far as battered wives are concerned. I think it's important that we keep in contact with those two very closely related things.

I was trying to find a quote that I read and didn't put aside—or maybe did and can't find it—that wife battering composes quite a large percentage of the violence statistics and it inclined one person to say if you want to escape violence in a community the safest place is in an alley and not in the home where all of this is going on. It's that kind of thing.

I would like to hear from you on the question of whether or not, related to the conflict, it isn't an impertinence for a solicitor general to be giving some advice to the courts rather than an attorney general.

**Hon. Mr. McMurtry:** As members of the committee know, countless numbers of conferences and seminars, certainly throughout the western world, have taken up this subject and it seems to me from my reading, such as it has been, that they have had difficulty coming up with too many solutions or recommendations other than in very general terms.

In any event, the administration of justice obviously has an important role to play, whether it be starting at the front end with law enforcement or otherwise.

**12 noon**

Certainly when it is suggested that the police place a low priority on this matter—and again I will deal with this, though perhaps it is more of a Solicitor General matter—I think that police statistics, which I don't have with me at the moment, indicate that the number of police hours related to domestic disputes are very, very extensive and really represent an enormous allocation of taxpayers' resources to this particular area. I'll see if those statistics can be made available for your interest during these estimates, but the figure is very, very high.

**Mrs. Campbell:** I think it's a question of what they do with the incidents rather than whether they attend. I think that goes to the question of the police college and how they are being trained to take a different attitude to this sort of thing.

**Hon. Mr. McMurtry:** I think you will find that the responses are numerous, given the resources of the police, which are strained. For example, I have reason to believe that

these problems are given a high priority. I tend to receive complaints from people who say that the policy response is often not as expeditious as they would like in matters involving damage to property, break-ins and what not, as opposed to domestic disputes.

It should also be noted that police officers, of course, are not trained as social workers.

**Mrs. Campbell:** That is what the college was doing in the first place, management in interpersonal behaviour. It was hardly a police college.

**Hon. Mr. McMurtry:** They do receive training, but obviously a really qualified social worker spends some years at the university and what not, and this is one of the interesting phenomena in our society, police officers who do take a great deal of training in interpersonal relationships are often asked to perform tasks that are more properly taken on or carried out by trained social workers.

In the best of all possible worlds you might say it would be nice if we could have every police officer trained for two years in this area because obviously, you're dealing with a very complex area. A great deal of the services that are rendered to the community by police officers are in this area.

Police officers, quite frankly, are aware also of the sensitivity of the situation and the hazards that are often involved in this type of policing. I think if you look at figures across North America the number of police officers who have been assaulted and killed as a result of becoming involved in domestic disputes is fairly distressingly high.

Thirdly, I don't think there is a police officer with any degree of service who has not experienced a situation on a number of occasions of being assigned to this type of duty where they are called to investigate a "domestic," and certainly, their presence is important inasmuch as it often ends the brawl, but in many cases, of course, the police officer becomes the target of both parties. That's a very common police experience, I realize.

It's a complex area but I just think it's unfair to accuse the police of not giving this a high priority.

There is the further unfortunate phenomenon of withdrawal of charges by the wife, which may be caused by fear of pursuing the charges. Drawing on my own experience as a part-time crown attorney for some 10 years—and this goes back a decade—where I was called upon to prosecute these cases, I've had a number of conversations with women who had come to my office to withdraw charges. Of course, the first thing

I was interested in was whether or not they were withdrawing the charges under duress, pressure, threats, et cetera.

While one cannot make categorical judgement in all these cases, there's no question in my mind that a large number of them were withdrawing because they honestly felt they had resolved their situation for the time being and didn't want to proceed. The percentage of withdrawals in the courts across this country is very high. I don't doubt for a moment that a number of them are the result of duress. Also, I do know a large number are withdrawn simply because the women feel solutions to their difficulties lie outside a courtroom and not inside a courtroom. That's difficult.

So far as the role of the police and the administration of justice are concerned, ultimately I have to rely upon individuals in the community, as well as members of the Legislature, bringing to me specific cases in which women have not been treated fairly by police forces or the administration of justice. I'm sure those cases exist as they do in any system. But it's necessary for anyone in my position, in order to maintain a high degree of sensitivity, to be made aware of individual cases, because individual cases allow you to get to the problem in a more effective way than by making generalizations. It's often like nailing jelly to the wall to try to deal with a generalization that the police aren't sensitive enough, or do not give a high enough priority to this particular problem, without some more specific evidence.

**Mrs. Campbell:** If that's what you want, I'll bring in some women from the shelters tomorrow.

**Mr. Warner:** Picking up what Mrs. Campbell has said, drawing the comparison with the child-abuse problem—which obviously isn't involved yet—I get the feeling there has been some progress in that serious issue. Are you prepared to do something about the problem of wife-beating?

For example, one of the issues we've keyed on is that women are reluctant to lay charges. In one case, I found the woman was genuinely surprised to learn she could lay a charge: "It's my husband. I can't lay a charge against my husband," is what she said.

**Mrs. Campbell:** The old rough rule of thumb.

**Mr. Warner:** Yes. I wonder if an advertising program—similar to the one for your new parking-ticket system—would be a good

idea, informing women they have rights and suggesting that when they are assaulted by their husband or anybody else they have the right to lay a charge and should lay a charge.

12:10 p.m.

Taking it from there, part of it may be a reconciliation process, that's understandable. Social workers may be involved. They may want to reach a reconciliation. But, at least, that would help bring this problem out of the closet.

When you do that, when you start to open it up, you have a better chance of solving the problem. As long as some women don't know they have rights, as long as women are fearful, or if they don't ask the police officer about laying a charge, or feel it's up to the police officer to lay a charge without that basic information, I don't think we are doing a service to those women in that unfortunate position.

I wonder if you would be willing to consider that suggestion. Alternatively, are there other things you are prepared to do to help solve the problem?

**Hon. Mr. McMurtry:** I'm prepared to take seriously any suggestions coming from this committee. Firstly, one of the valuable aspects of this whole process with estimates is that it involves a form of public communication. I hope when issues are raised as forcefully as this issue by the justice critics in the Legislature, our friends in the media will be encouraged to report them to the public. I think that's a very important part of the process.

I am quite prepared to take up the issue and review it, continually both with the police forces and with the crown-attorney system, to satisfy myself it is being given the priority I believe it should be given. I made it clear to the crown-attorney system that crimes of violence are to be given a particularly high priority. I must admit we've attempted to take a hard line when prosecuting these cases. We're not always satisfied by the sentences, and sometimes feel the sentences for crimes of violence are inadequate. It is of concern to me, because quite frankly I believe the sentences in crimes of violence often do not reflect the seriousness of the matter.

As Mr. Warner referred to me as "the boss of the courts," I want to make it clear quickly that I am not, of course, the boss of the courts at all —

**Mrs. Campbell:** He uses persuasive powers—

**Hon. Mr. McMurtry:**—that the independence of the judiciary is a fundamental bulwark of our proper administration of justice.

**Mr. Chairman:** If I might make a suggestion, Mr. Minister, I found in dealing with the problem of the habitual offender and violence within the family even within the community, either racial violence or violence against persons in the family, two things happen. One is the police get tired of going to that house and dealing with it; therefore, you don't get as great a response, because they're tired of trying to persuade the person in a crisis situation to lay charges. But when I make the suggestion that the community police officer, CSO, drop in during the week or during a period of weeks and have a chat with them, usually the problem sorts itself out. Either the next time they have more courage to lay the charge, or there's some other solution to the problem.

But it seems as though the average police officer is not prepared, or does not think of involving these plain clothes officers who often have more social work skills than they do, and who can reason with people when they are not under stress. Perhaps as the Solicitor General you can get the various police departments to understand they have to consult with the CSOs, and perhaps have more CSOs out there.

**Hon. Mr. McMurtry:** I guess that is the basic problem. There are not enough community officers working in the community in that area.

**Mrs. Campbell:** I think too, there seems to be a division in the police forces. Those who are—I can call them enforcement officers, and they all are really—but there is a group which does not think a community cop or a youth bureau police officer is in the same category and that is a matter of education.

I did make that one statement and believe it to be true. But in dealing with the police issue, I was dealing with the training and the message they get in the training. It is important that we isolate the police officer himself from what he has been trained to perceive in these things.

We see that crimes of violence, generally, are in the police role, and crimes of violence in the home are treated differently in your manual. We have to address that if I may suggest it to you, as part of the problem.

**Hon. Mr. McMurtry:** I will review that aspect of police education to see if there isn't something more that can be done. I think the chairman made a valid observation a moment ago about the frustration many police officers feel when they become familiar

with a specific family. I have heard frequently that they urge the woman to go and lay charges, because they cannot lay charges unless they are there while the violence is occurring. It requires the woman to appear, and many police officers I have known personally over the years are frustrated by the refusal of the woman to lay charges even when police officers offer to drive them to the JP and to assist them in the process.

**Mr. Chairman:** You get the same situation with older people who are afraid of their alcoholic sons or daughters. You run into the same kind of beatings, the same kind of situation; or at least I have found that.

**Mr. Ziembra:** I wonder, Mr. Attorney, if you might consider expanding the role of rape crisis centres which assist women who are subjected to the ultimate assault, rape. We can get into this later on in the estimates, but I think a commitment in that regard is long overdue. It would have to do with go-betweens, someone who can intervene and assist in dealing with the police—some police are not as sensitive to crimes against women as others—and counselling women about their rights.

I do not know how well served this province is by rape crisis centres, but I went to Timmins on the weekend and they are most anxious to get a rape crisis centre. I promised I would raise that with you.

12:20 p.m.

I also want to get your comments on the Criminal Code's penalties for rape. It seems to me that because most judges and prosecutors are male, they have a kind of a bias about rape, and penalties for rape are not as severe as penalties for simple assault.

**Hon. Mr. McMurtry:** Dealing with the rape crisis centres, I agree. I prefer to see centres dealing with a broader mandate, with violence generally.

I think Timmins is a good example. We have gone through this debate to some extent in the Justice policy field. In Toronto, for example, because of the size of the community the rape crisis centre staff can spend their whole time dealing with this problem. But I would have some difficulty in being persuaded that there should be a rape crisis centre in Timmins that is restricted simply to that type of crisis.

**Mr. Ziembra:** Assault against women.

**Hon. Mr. McMurtry:** Yes. I just do not believe there are that many allegations of rape in Timmins. In other words, I am saying they should have a broader mandate. This is what we have been trying to do, and we



have recently provided, for the first time, some commitment to funding the rape crisis centres in Ontario.

**Mrs. Campbell:** Yes, and they nearly folded.

**Hon. Mr. McMurtry:** Depending on the community, they should be associated, where practical, with existing community organizations that have some resources and some talents related to crisis intervention. Certainly I am totally supportive of any assistance that we can give to communities to assist individuals in knowing their rights, particularly when it comes to crimes of violence. I would like to see us doing more to encourage communities to provide, beyond our own support, this type of assistance where people are victims. Certainly in my view, and this view is shared by our colleagues in the Justice policy field, the whole matter of victims has to be given a higher priority in the administration of justice when dealing with the offender. That is as it should be. We should be allocating greater funds.

I think there are legitimate concerns that the victim sometimes gets a little lost in the process. This is why I have been interested personally in the concept of rape crisis centres. When I first became acquainted with the local rape crisis centre, I had no difficulty in being persuaded that it was providing a valuable service, and established quite a good working relationship between the rape crisis centre and the local crown attorney's office. I urged our local crown attorney's office and those throughout the system to do two things.

First of all, in a large community like Metropolitan Toronto where there are a large number of cases to be processed, one crown attorney should follow the case through from beginning to end, so the victim would not be faced with seeing one crown attorney before the preliminary hearing and then suddenly meet a stranger just before the trial. I hope we have accomplished something there.

Secondly, we wanted to develop a certain expertise. We wanted to make sure that the crown attorneys who prosecuted these cases had the appropriate sensitivity to the predicament of the victim to enable them to prosecute and to present the cases as effectively as possible before the court.

I tend to think that the rate of success in some of these prosecutions has increased at least modestly. There are many cases in which I'm not happy with the sentences. We appeal a number of sentences every

year, and I would like to see a greater degree of success with some of these appeals.

I am worried that the whole issue of crimes of violence not lose—I don't like to use the word "priority" when it comes to sentencing. When I started to practise law, for a rape conviction the sentences usually started at about 10 years and went up from there. The average sentence has decreased considerably. It may have been that some of the earlier sentencing was a little harsh.

**Mrs. Campbell:** It was once a capital offence.

**Hon. Mr. McMurtry:** Yes. It was once a capital offence. On the other hand, I can't say that I am particularly satisfied with the range of sentences that are handed out in cases of serious sexual assault.

**Mr. Ziemba:** What is the maximum penalty for rape now, seven years?

**Hon. Mr. McMurtry:** No. It is life imprisonment.

**Mr. Ziemba:** What is the average sentence that's handed out?

**Mrs. Campbell:** About four years.

**Hon. Mr. McMurtry:** I think that's probably fairly accurate.

**Mrs. Campbell:** We conclude that these rapists probably haven't a long life.

**Mr. Ziemba:** Why don't we do something about that? I'm serious.

**Hon. Mr. McMurtry:** Quite frankly, the Court of Appeal of this province doesn't frequently agree with us in this matter.

**Mr. Ziemba:** Why don't you move for a minimum?

**Hon. Mr. McMurtry:** I hate to tell this, but there is a certain disagreement of principle between the Ministry of the Attorney General and the Court of Appeal in this province with respect to some of the sentencing practice.

I think we have a very distinguished Court of Appeal and I respect it. I think we are very fortunate. But I have to tell you, quite frankly and publicly, there are different views. They are the highest court of the province and we have to, and do, respect their decisions.

**Mr. Ziemba:** They are mostly men, though, aren't they?

**Hon. Mr. McMurtry:** There is one woman.

**Mr. Ziemba:** Why don't you move toward a minimum sentence of 10 years, Mr. Attorney General? How about some leadership in this regard?

**Hon. Mr. McMurtry:** As you know, it's a matter for the federal Parliament and their Criminal Code.

**Mr. Ziemba:** You can make representation to them.

**Hon. Mr. McMurtry:** The question of minimum sentences does cause me some concern. I think it can produce a high degree of unfairness. There are always cases—they may be very few in number—where a minimum period of incarceration is perhaps, not justified. I think it builds into the system a certain rigidity that can produce injustice. While I'm not very happy on many occasions with the sentences that are handed out, I do have some difficulty with the concept of minimum sentences when it relates to periods of incarceration.

**Mr. Ziemba:** The average sentence for rape now is four years?

**Hon. Mr. McMurtry:** I think Mrs. Campbell's estimate is probably fairly accurate, yes.

**Mr. Ziemba:** That strikes me as a leap backwards.

**Mrs. Campbell:** The difficulty that I see, and I go back to my experience in my early student days, is if the sentencing is too tough—for example, when it was a capital offence—statistically, you will find that there were very few convictions and it was reduced from a capital offence.

12:30 p.m.

The reason we were given was that all-male juries—they were all-male juries—would simply not convict when it was a capital offence. It has been reduced and reduced until in my view it's almost as if we ought to be issuing licences.

**Hon. Mr. McMurtry:** I agree basically with what Mrs. Campbell has said, but I would like to comment on what you said, Mr. Ziemba, in respect to the fact that the courts are made up of judges and prosecutors who for the most part are male; although we are having an increasing number of female lawyers appointed to the bench and have a significant number of female prosecutors, I'm proud to say, in our crown attorney system.

Mrs. Campbell mentioned a moment ago that it wasn't so many years ago that juries were all male. This has changed, of course, considerably. But the experience has been that female jurors are no more likely than men to convict in this type of offence. As a matter of fact, there are many people in the system who feel that female jurors may even be a little tougher on the complainant and less sympathetic to the complainant than a

male juror. Certainly that is a widely-held belief.

**Mrs. Campbell:** In many cases, our society as a whole seems to want to penalize the unsuccessful wife; if a marriage fails, it is her fault, regardless of the circumstances. It's an educational problem.

One reason for making this a fairly visible issue is so that people will understand it isn't the fault of the wives that they get beaten up, and it isn't the fault of the wife if the marriage breaks down. That is a societal attitude to some degree yet and it goes back, I suppose, to the old British rough rule of thumb in the beating of wives and what was permitted and what wasn't permitted. Women are still chattels in the minds of many people in our society.

**Mr. Ziemba:** Before we leave that, do we have your commitment to rape crisis centres in the large urban areas?

**Hon. Mr. McMurtry:** I obviously can't make any specific financial commitment on behalf of my colleagues. It's a cabinet decision. But we have made financial commitments for the first time, just within the past month, to rape crisis centres in Ontario. It's not a large amount of money, I can't tell you specifically what it is. It's just under \$200,000, I think.

I would like to see the utilization of existing resources where possible. I think we have to face up to the fact that when it comes to providing social assistance in the whole area of crisis intervention, or in most other areas, we're going to have to turn more and more to the community and encourage the community to provide these resources to some extent on a voluntary basis, because whether we like it or not, as a society we're running out of resources. I think in areas such as crisis intervention, assisting victims with a better understanding of the criminal process, there are organizations, volunteer groups with some funding that could be very helpful.

**Mrs. Campbell:** You don't think we might get the husbands in some of these cases to contribute, rather than the whole community being involved? They are the last ones who are asked to contribute to any of these problems, it seems to me, whether they desert or whatever they do.

**Hon. Mr. McMurtry:** We're in another area when it comes to deserting husbands. We'll be coming to it at some point during our estimates.

**Mr. Ziemba:** One last suggestion, when you are running the ads about traffic

offences, could you perhaps make reference in a small box in those ads to the rape crisis centres and the telephone numbers—you have the space anyway—and give that help to the volunteers?

**Hon. Mr. McMurtry:** I think that might be a little confusing. We're talking about provincial offences.

**Mrs. Campbell:** I would prefer to have the Attorney General advise me about his attitude to the court in orders. I think there should be something available to women in this kind of situation. I am inclined to worry a little bit about advertising because there isn't the availability. If they advertised the shelters, I think more women would be ready to leave, but where in the world they would go is quite another thing. There should be some lead time in planning before that is done.

**Hon. Mr. McMurtry:** The next issue I would like to deal with—

**Mrs. Campbell:** But you haven't answered my question about how you are persuading the courts, or how the Solicitor General is persuading the courts, to change these orders. That is really very important.

**Hon. Mr. McMurtry:** I was going to deal with that.

**Mrs. Campbell:** I'm sorry, I thought you were going on to another topic.

**Hon. Mr. McMurtry:** No, because next I was going to deal with your references to my letter to Marilynne Glick, and some of the discussions we have had in the Legislature.

I have been concerned that perhaps there has been some confusion in this issue and I had prepared a letter, directed to Mrs. Campbell, which I would like to read for the record, and then I will be happy to deliver it to her personally.

The letter, which is dated April 10, reads as follows:

"Dear Margaret:

"I would like to take this opportunity to respond to the point of privilege you raised in the Legislative Assembly on April 1, 1980, with respect to the role of police in the enforcement of family law orders. It seems to me that any misunderstanding has arisen from a failure to appreciate a very fundamental legal and practical distinction between two rules relating to enforcement of court orders.

"The first rule is that the family law orders are primarily enforceable by the sheriff. The second rule is that where police

assistance is shown to be necessary, in appropriate circumstances a court might make a different order involving the police directly in enforcing a family law order.

12:40 p.m.

"I have never issued a directive to the practising bar that the police are to refuse to be involved in the enforcement of a family law order. It is one thing to say that sheriffs have the primary responsibility for enforcing family law orders and quite another thing to say that the police are not in any circumstances to be involved in enforcing a family law order.

"There is no doubt that traditionally the primary responsibility for execution and enforcement of court orders in a civil dispute has rested with the sheriff. I have no reason to believe that as a general rule this responsibility should be altered.

"I emphasize, 'as a general rule.' Even in enforcing family law orders in the emotion-laden and often dangerous context of a domestic dispute our sheriffs have shown their willingness and capacity to execute the orders of the court. In cases of domestic violence and child custody disputes, however, it seems increasingly necessary to have the power to involve the police to protect a spouse, to prevent the abduction of a child and to preserve peace and order.

"With regard to Ms. Glick's inquiry last fall concerning the enforcement of family law orders, I would like to point out that there have been many significant developments taking place.

"In February, I issued a memorandum to all chiefs of police advising them that responsibility lies with the police for the execution of warrants under the Family Law Reform Act. A warrant can be issued for contempt of an order restraining a spouse from molesting, annoying or harassing the other spouse or for failure to obey an order for exclusive possession of the matrimonial home.

"A warrant could also be issued or the contempt of a custody order under the Family Law Reform Act. This directive, the only directive issued by me on the matter of family law orders, was made in order to clarify confusion that has arisen among police, sheriffs and other authorities.

"There has also been some confusion about the applicability of section 119 of the Judicature Act, which requires that among others, both sheriffs and police are to aid, assist and obey the court and judges, when required to do so by an order of a court or of a judge.



"Particularly in child custody cases where a party is withholding or abducting a child in defiance of a court order, it is of the utmost importance that the court clearly have the powers to direct the most appropriate authority to apprehend the child and place him in the care of the person lawfully entitled.

"Accordingly, in the Children's Law Reform Act which I introduced for first reading last session, we've made provision to ensure that the courts at all levels have the authority in these and other appropriate circumstances to make an order directing the police to locate and take the child to the person lawfully entitled to custody or access.

"I wish to make it clear at this time, however, that I would be very concerned about any lessening of the primary role and responsibility of the sheriff's office in enforcing these orders. I expect sheriffs, police and the bench and bar to exercise their discretion carefully and cautiously in this area to protect the integrity of the administration of justice in this province. In my view, it would be a most undesirable development if the police could be thrust into the centre of any domestic dispute and burdened with the responsibility of making 'curbside' adjudications on the merits of a domestic quarrel.

"I hope, rather, that by highlighting these issues, local sheriffs and police forces in conjunction with the bench and bar will develop their own guidelines and procedures as to the most effective means of enforcing family law orders in their community.

"Discussions along these lines have been held in London and Toronto. The sheriff's office for the judicial district of York and the Metropolitan Toronto police are working together to develop guidelines and procedures for the enforcement of family law orders. As part of those discussions we're reviewing means by which we can extend the hours that the services and facilities of the sheriff's office can be made available in such cases.

"In view of these many recent developments, it may be that the materials used at the police college will require revision and updating as more specific guidelines and legislation are available. I have already indicated that I will review the manual and determine what better instruction, if any, might be given.

"I trust that these comments will further your understanding of my views concerning police enforcement of family law orders.

"Yours very truly."

Mrs. Campbell: I appreciate the letter but I don't understand, and perhaps it's because

I'm not good at comprehending something read to me. Could I understand what the Solicitor General meant, and I think you can appropriately answer this, when it says, "In the past some courts have directed the orders specifically to a police force but they are being persuaded to discontinue the practice"?

It's out of context, I suppose, but the whole sentence deals with the enforcement of civil family law orders in the cases which I outlined. The level of the court which issues the orders does not make any difference in these cases, and then there is the sentence, "I hope that is of assistance to you."

I want to know why they are being persuaded, quite apart from this letter—because your letter indicates there is a role for police in certain cases—and what methods are being used to persuade the courts to discontinue the practice. Are they friendly chats or what are they?

Hon. Mr. McMurtry: Any communication through any of the courts would be, of course, with the chief judge of the family court, so far as that particular court is concerned, or any other judge.

There were a number of cases in which we felt the judges were indiscriminately requiring use of police officers when it was clearly within the jurisdiction of the sheriff's office. It was this practice we are attempting to discourage through the appropriate channels.

I would be the first to concede that Ms. Click probably deserved a more complete explanation and this was one of the reasons why, given your concern over my letter, I took the trouble to prepare a more comprehensive response to you, and a copy, perhaps, should be sent to Ms. Click.

I think a fuller explanation would have been desirable in order to make a little clearer what we are trying to do in cases where judges were in effect ignoring the traditional role of the sheriff's office by simply directing that certain matters be done by the local police, in what we regarded as a fairly indiscriminate manner. It caused us some concern because, as I have pointed out in the letter I have just handed you, the sheriff's office still has an important role to play. We think the sheriffs' offices generally are well equipped to play that role, except when you get into certain situations where there is a reasonable apprehension of violence.

We were talking about abduction cases, access cases, where we do provide in the Children's Law Reform Act which we in-

troduced—and will be reintroducing shortly with a few amendments, but not to that section as far as I am concerned—for clarifying the jurisdiction of the court to make orders specifically directed to police forces.  
12:50 p.m.

I said to you in the Legislature, for example, there is some confusion in the minds of judges as to what jurisdiction section 119 of the Judicature Act gives, for example. We hope this will clarify the situation to some extent.

**Mrs. Campbell:** Would it not, then, be appealing to you similarly to clarify these types of orders for say, nonmolestation? My information—and it comes from several practising in this field, not just Ms. Glick—that judges now are not making these orders even in cases where there is ample evidence that the situation is a violent one. When I said you seem to be nullifying it, this, I am advised, is the effect of what has happened by your persuasive tactics.

**Hon. Mr. McMurtry:** It would be helpful to me, pending the passage of the Children's Law Reform Act, if you could give me additional information as to the types of difficulties these solicitors are running into. This is something we can discuss with the chief judge of the family court.

**Mrs. Campbell:** I would think reference to the court should be at all levels.

**Hon. Mr. McMurtry:** Yes. I mentioned family court because I rather suspect that of these issues a large percentage would be related to the family court, and then, of course, to any other court where there seems to be some difficulty.

I would like to know more about some of these practical problems that have arisen, because it will help us in our discussions—which I referred to in my letter—with the local sheriff's office and the police, in order to clarify this situation.

**Mrs. Campbell:** My meetings were with a group of lawyers, and some social workers who had the same concerns. I shall get back to them and get you the information.

But it does seem to me apart from that, that once you found the judges were making these orders and then had discussions with the chief judge or chief justice or whoever

to discourage the practice, you must have somehow foreseen what effect this would have even on those cases where violence was indicated, and that perhaps you might have accepted that kind of thing in your discussions. I don't take it from this that you did.

**Hon. Mr. McMurtry:** I can't recall specifically what was said at the time. I can only say, in some cases where there was no apprehension of violence, judges, in our view, were simply using the local police force as sheriff's officers, and this was causing some very serious concerns with both the local sheriff's office and the local police department.

**Mrs. Campbell:** I would have thought that judges, and I have a high regard for our judges, would have been men and women of greater understanding and would use that particular order in appropriate ways. I am a little disappointed to find they would use it in cases where it would not be indicated as necessary.

**Hon. Mr. McMurtry:** We think the situation will be clarified.

**Mrs. Campbell:** Do clarify it for children. And I think it would be nice to clarify it for women.

**Hon. Mr. McMurtry:** Really what we are dealing with here are access and custody.

**Mrs. Campbell:** Yes, I am aware of that, and they are important.

**Hon. Mr. McMurtry:** They do involve a number of the problems that women face in these domestic disputes.

**Mrs. Campbell:** Are you sending a copy of this letter to Ms. Glick? Are you advising me that you are doing that, or did you intend to that I should—

**Hon. Mr. McMurtry:** Perhaps I should. I was just going to indicate to you that unless you have some objection, which I am sure you—

**Mrs. Campbell:** None whatsoever.

**Mr. Chairman:** Since it is 12:55 p.m., rather than having the Attorney General deal with the next item on his list, we could adjourn. We stand adjourned until tomorrow after orders.

The committee adjourned at 12:56 p.m.

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No. J-2

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General

**Fourth Session, 31st Parliament**  
Thursday, April 17, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, APRIL 17, 1980

The committee met at 3:54 p.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

**Mr. Chairman:** I am going to recognize a quorum. Mrs. Campbell has some issues she wanted to raise coming from the response of the Attorney General (Mr. McMurtry) to her leadoff. I will allow her to do that and then perhaps the Attorney General can continue with his response to Mrs. Campbell and Mr. Warner.

**Mrs. Campbell:** Thank you, Mr. Chairman. I am referring to the statements made by the Attorney General which indicated—and I'm not phrasing them accurately so correct me if I am giving the wrong impression—in my perception indicated that judges were being indiscriminate in exercising the option of directing the police.

I would like to know if the Attorney General would table the statistics of those cases so that we could understand how many there were and what kind of an investigation there was to determine this was happening? Were lawyers consulted, were orders reviewed, were transcripts read; and just what sort of study was done to persuade the Solicitor General that this matter was out of hand and that, therefore, some persuasion should be exercised so far as judges are concerned at all levels?

**Hon. Mr. McMurtry:** I think, with respect, Mrs. Campbell, you have overstated our position quite significantly. No one ever suggested that the situation was running amok in the sense that it was out of hand. There was some concern expressed and my recollection—and I will see what information we have—is that it is not a major problem but it has become of sufficient concern to some police forces that it was felt we should try to clarify the situation, for example, and the matter, as I recall, was probably discussed with the chief judge on one or two occasions.

I certainly did not intend to create the impression that it had become a major issue

or that the judges were behaving in any reckless fashion in this regard. There just seemed to be some concern and I will try to find out what information we have with respect to the level of concern.

I don't know what study was done or the nature of the study. Again it is something where I will try to see what information we have and report back to the committee during the course of the estimates.

**Mrs. Campbell:** I would appreciate that, because I am informed that last night there was a meeting of the family law section of the Canadian Bar Association. James Noble, deputy chief of police of Metropolitan Toronto, was present.

I have checked these statements because they frighten me a little, and I will say that I now have information from two lawyers who were present last night who confirm that he informed the lawyers that in most cases where an order had been directed to the police, they would not obey these orders. When asked whether he would respond to a specifically drawn order, he indicated that he himself had not obeyed an order specifically naming him.

I am informed that the case to which he was referring was a case where the direction was to him and some OPP officers and it had to do with child abduction and not battling. When he was asked how one should draft an order the police would obey, he would not offer any suggestions.

There is an added statement that is not as clear as I would like it to be but there is confirmation that he did indicate he had discussed the matter with a judge of the Supreme Court but whether he had discussed the specific order or the generality of the situation is what is unclear from the material I have before me.

Coupling that situation and taking the letter the Attorney General gave me yesterday, I guess I want to really understand to what extent the police are influencing procedures in our courts and to what extent the police are of the opinion that they can ignore an order.



4 p.m.

One of the other circumstances I would like to draw to the Attorney General's attention is that when I was present at the bail-project open house where the Minister of Correctional Services (Mr. Walker), who is also the Provincial Secretary for Justice, was present; I asked him to come and engage in a conversation where there was a clear indication that even when there was a judge's access order for the bail-project people to see prisoners, there was at least one police officer who took the position that he did not require to obey that order since he had the sole jurisdiction over prisoners.

I guess I really want to know, in this stage of our justice system, to what extent the police are excused from obeying an order of the court and whether the police are meeting with judges on this very important matter of the orders which come under the restraining order type provisions of the family law legislation.

I really am frightened. We are precluded from approaching judges for the most part. I would have thought that the police force would not be in a better position in these circumstances.

**Hon. Mr. McMurtry:** Obviously, I never instructed any police force not to obey an order of the court.

**Mrs. Campbell:** It is suggested that you did.

**Hon. Mr. McMurtry:** I think I had better try to find out as precisely as I can just what Deputy Chief Noble said and what is the best information we have in relation to this matter. Rather than attempting to reply in any piecemeal basis, I will try and respond—

**Mrs. Campbell:** I really did not expect you to be able to respond, but I felt it was an appropriate time to raise it, since it was drawn to my attention as a result of a call from one of the lawyers who was there. Then we checked with some other lawyers who were there. There was this disagreement as to the reason for his approaching a judge but there was no disagreement that he, in fact, had.

**Hon. Mr. McMurtry:** I don't know. I would be interested to know. I would have thought that the deputy chief would be, perhaps, familiar with our proposed Children's Law Reform Act, which provides as we discussed earlier, with the member for St. George particularly.

**Mrs. Campbell:** And the directives you gave to the police forces, as you outlined in your remarks.

**Hon. Mr. McMurtry:** But in any event, we will pursue that for you, Mrs. Campbell.

**Mrs. Campbell:** The second point I would like to make is that you did very kindly say you were prepared to review the police manual. I wondered whether, in the course of that review, you would be willing to at least have some input from women operating in this field.

It has been the practice of government, on the whole, when they are reviewing something, to call on those who have some expertise. I was thinking of those who are in the field of providing support services for assaulted women, the YWCA in Metropolitan Toronto, Interval House, Women's Counselling, Referral and Education Centre, for example, so we could perhaps have some kind of input that would resolve some of the training problems with the police.

**Hon. Mr. McMurtry:** As a matter of fact, you might be interested to know, Mrs. Campbell, that early yesterday evening I was interviewing and discussing your concerns in this respect with a gentleman whom I expect to appoint as the director of the Ontario Police College in Aylmer very shortly. Maybe there would even be an opportunity, if you so choose, to discuss them directly yourself, as well as any other input.

**Mrs. Campbell:** I would be delighted to discuss this once I know the identity. I know the acting superintendent who is up there.

**Hon. Mr. McMurtry:** This information will be made known within the next few days. I expect that the decision will be confirmed, but I wanted you to know that your comments, of course, will be taken very seriously and that I have already passed them on to an individual, who, I believe, will be very intimately involved in police training and education for the next several years at least.

**Mrs. Campbell:** Those were my remarks as far as that particular item was concerned.

**Mr. Chairman:** The Attorney General, then, will continue with his response to the critics.

**Hon. Mr. McMurtry:** The next item I had noticed in respect of Mrs. Campbell's opening statement was in relation to the legal aid budget with the suggestion that there had been a reduction in as much as we had not provided in our estimates the amount that was requested by the law society.

**Mrs. Campbell:** I think I said the legal aid committee.

**Hon. Mr. McMurtry:** The legal aid committee, yes, of the law society. Mr. Warner touched on this as well, of course. I wanted to make several comments about that.

One of the matters we have been dealing with in recent years with respect to the Law Foundation of Ontario is the contribution through the law foundation to the Legal Aid Plan. We have had very prolonged negotiations—the law society, the law foundation and my representatives from the law foundation, the Treasury people—with the banks with respect to the shockingly low rate of interest that was paid on lawyers' accounts. After several years of negotiating we finally have been able to collectively persuade the banks to increase substantially what they are giving. This was discussed in the Legislature from time to time; it was only three per cent.

The new rates that have been negotiated are—the Deputy Attorney General has just handed them to me—Bank of Montreal, 12.25; Toronto-Dominion, 11.5; Royal Bank, 11.25; Canadian Imperial Bank of Commerce, 11.5; Bank of Nova Scotia, 10.75. This is a long-overdue reform that will involve a substantial increase in the contribution through the Law Foundation.

Given overall government program restraints, needless to say my colleagues in the cabinet take into consideration the overall increase in the legal aid budget, whether it comes from us directly or whether it comes through the law foundation. Of course, lawyers' trust accounts, strictly speaking, obviously are not government funding. The fact of the matter is I am told the increase in the legal aid budget, by reason of what has been accomplished with the banks this year—the figure as given yesterday when I asked—is 18 per cent this year over last year. True, the increase in the government contribution only represents a small part of that but I think the funding, so far as the Legal Aid Plan is concerned in that respect, is reasonably satisfactory. They are still dealing with the issue of the clinical funding. As you know, I have been very supportive of the clinics.

4:10 p.m.

**Mrs. Campbell:** We try to be supportive of you.

**Hon. Mr. McMurtry:** And I know you have been very supportive of me. The number of clinics, I think, have quadrupled during my tenure. We made it very clear to the Law Society of Upper Canada that we

think the increase in the number of clinics must continue to be given a high priority.

You also wanted to know about the eligibility, and a copy of the new forms.

**Mrs. Campbell:** Thank you. We have just received them now.

**Mr. Warner:** Mr. Chairman, could we return to the funding aspect, because, with respect, I don't think Mrs. Campbell's question was answered, nor was mine. I understood from Mrs. Campbell's remarks that there was a budget request of approximately \$35 million—

**Mrs. Campbell:** My information is \$34,665,000 reduced to \$31,203,000.

**Mr. Warner:** I think what we asked for was a detailed accounting of why the budget amount requested was not granted. What accounts for the decrease in the amount of money?

**Hon. Mr. McMurtry:** I thought I had responded to that by giving you the result of the negotiations with the banks in which the government representatives participated. In the calendar year 1979 the law foundation contributed \$3.8 million to the Legal Aid Plan. The estimated figure for 1980 is \$8.6 million, an increase of \$4.8 million.

**Mrs. Campbell:** Was I correct in my figures as far as the Management Board of Cabinet is concerned?

**Hon. Mr. McMurtry:** The decision was our increase was \$1.5 million this year. It was the view of the management board, endorsed by cabinet, they looked at it on a global basis, that with the Legal Aid Plan, with the increased contribution from the law foundation, the overall increase was in the area 18 per cent. Given many other programs in the government that was as much as they were going to do for us.

**Mrs. Campbell:** They may actually give five per cent, as I understand it.

**Hon. Mr. McMurtry:** I'm sorry, Mrs. Campbell?

**Mrs. Campbell:** My understanding is that the amount approved by the Management Board of Cabinet represents an increase of five per cent over the previous year, that is actual government allocation of funds. Is that correct?

**Mr. Leal:** Yes, I think that is correct. But I think it would be fair to say that management board has assured us that if there is a shortfall in the \$8.6 million from law foundation funds, they will review the budget to see if they can make up the difference. In other words, the figure of \$1.5 million was

made having \$8.6 million from law foundation funds in mind. If that is not realized, then they are prepared to review the budget.

**Hon. Mr. McMurtry:** You see these funds, although not strictly speaking government funding, are statute-created funding, created by the Legislature of the province. In any event that was the decision of management board, endorsed by cabinet, and that is the net result. Quite frankly, I would have been happier, as any minister would, as far as his own high priorities go, to see the funding more than it was—

**Mrs. Campbell:** We concur.

**Hon. Mr. McMurtry:** —but that was the net result.

**Mr. Renwick:** Perhaps you could tell me what is the legal aid fund short now after all those adjustments are made. What number of dollars did they not receive?

**Hon. Mr. McMurtry:** They had requested an additional—

**Mr. Renwick:** They had an overall amount which they wanted to operate the fund. Then there were various adjustments with the bank, and what you gave, and so on. What is the position of the legal aid fund now with respect to the dollars? How did they come out in the shuffle?

**Hon. Mr. McMurtry:** I'm not sure that I quite understand the question. Of course, government has an obligation so far as the accounts are concerned. There is a statutory obligation to see that those accounts are paid. Obviously, the amount that the law society would like for legal aid would include expenditures, I suppose, in relation to community clinics, student legal aid societies, research facilities, special projects, and administration generally.

**Mr. Renwick:** I was thinking of the total amount that the legal aid fund needs to operate for the year, from whatever its sources may be, when they have settled with you, and so on. Did they come out even?

**Hon. Mr. McMurtry:** What it needs to operate or would like to have to operate may be, perhaps, two different things.

**Mr. Renwick:** They must have had a global figure.

**Hon. Mr. McMurtry:** They had a global figure. They requested \$46.4 million and they ended up with \$43.5 million.

**Mr. Renwick:** So they were short a little under \$3 million.

**Hon. Mr. McMurtry:** Yes, in relation to their request.

**Mr. Renwick:** Is any part of that referable to community clinics, or is it up to them as to how they then work?

**Hon. Mr. McMurtry:** We have an arrangement, as I understand it, whereby we can allocate specifically a certain portion of our increase of \$1.5 million this year. That's all our increase is. I have the authority, as I understand it, to allocate whatever portion of that \$1.5 million to legal aid clinics, in addition.

**Mr. Renwick:** Will there be a shortfall in the amount that the legal aid fund wanted for community clinics?

**Hon. Mr. McMurtry:** As I understand it, they are in the process of reviewing these. I don't know if I have any more recent information. I wonder if somebody can assist me on that.

**Mr. Renwick:** The reason I ask is that with each clinic, under the new director they went through a process to build up what was needed for each of the clinics. That amount went to the clinic-funding committee and presumably that amount would be included in the global amount they would need for the fund.

I'm curious as to whether or not any part of the deficiency of \$3 million is going to affect the amount available to operate the clinics, because they went through a very detailed and very careful assessment of the clinic that I am involved with. I'm sure they did it with each of the others. There isn't very much leeway and the clinics are going to be hurt if they don't get that amount.

**Hon. Mr. McMurtry:** I appreciate that. I realize there is a legitimate reason for the clinics to want some sort of catch-up. I know it has been suggested that the salaries, for example, have been inadequate and I know there have been some very significant and probably justified increases proposed. As I understand it, we're still waiting to hear from the law society with respect to the process. Perhaps Mr. Campbell could address this directly.

4:20 p.m.

**Mr. A. Campbell:** I understood that the legal aid committee, at its meeting on Wednesday, agreed with the request made by the clinical funding committee for the total increase that they had asked for.

**Mr. Renwick:** They agreed on the total amount that was asked for for the clinics?

**Mr. A. Campbell:** The funding committee made their indication of what they needed, including the catch-up, which would be a total of about 38 or 40 per cent over last



year's budget, a lot of which represented a catch-up in salary differential between what clinical people were making, and people on the street or in the government were making.

The Attorney General indicated both to the clinic funding committee and the legal aid committee, which are both committees of convocation, that he would appreciate the legal aid committee's view as to what he should designate.

As I understand it, the legal aid committee on Wednesday agreed with the clinic funding committee that they would jointly request the Attorney General to designate the full amount requested by the clinic funding committee. In other words, the overall Legal Aid Plan is in agreement. There is no dispute between the fee-for-service part of the plan and the clinical part of the plan. They're all agreed that they recommend the Attorney General should designate the full amount.

**Mr. Renwick:** The only problem would be —no concern of yours—at the point of whether or not the recommendations of the staff to the clinic funding committee was accepted by the clinic funding committee, I guess.

**Mr. A. Campbell:** I note that some of the clinic funding committee staff are present. Perhaps they could elucidate more. I understand that a number of clinics may well be appealing and asking for even more than the clinic funding committee had asked for.

**Mr. Renwick:** I didn't realize Ms. Mossman and Mr. McCourt were here. Perhaps I could just ask them that specific question: what the staff needed for the clinics and what the clinic funding committee agreed to, was that the same amount and did you get it?

**Mrs. Campbell:** Could we have them come forward if you're going to ask, so it can be recorded?

**Hon. Mr. McMurtry:** I haven't had a chance to be caught up as to the latest developments myself. It has been my hope that the two branches of the Legal Aid Plan would be able to agree between themselves, as Mr. Campbell has explained, the fee-for-service and the clinical people. If they're prepared to recommend to me that I designate the total increase in our funding towards the legal aid clinics, I can make it clear right now on the record I am quite happy to do that.

**Mr. Renwick:** I was presenting a very simple thing, that the process we were put through in our clinic in assessing what our needs would be for the next year was very good. I assume therefore that the same process was applied to all of the clinics so I could find no fault with the build-up. I

think what was recommended by the staff was very fair and very adequate. I certainly wouldn't call it generous but we were able to leave the meeting feeling, in the jargon of the day, comfortable with the amount.

All I want to make sure of is that there has been no cutback in the overall amount that will ultimately affect the operation of the clinic that I'm interested in. It's a very important clinic in a very important part of the world.

**Mrs. Campbell:** Of course, they all think their clinics are important, wherever they may be located.

**Ms. Mossman:** The answer to Mr. Renwick's question is that the request the clinic funding committee made of the ministry originally was the total amount of the request from which the clinic funding staff calculated the amounts that would be designated for individual clinics. The process used with the Riverdale clinic was identical to the process used with all the other clinics, and assuming that the total amount is designated, that is the amount that will be received by individual clinics.

However, pending the designation, none of the clinic funding staff's initial decisions have been reviewed by the clinic funding committee, and none of the appeals of those clinics which were unhappy with the staff's decisions have yet been heard. It depends on how much money is received.

**Mr. Renwick:** The minister is saying he's going to designate the amount that was asked.

**Hon. Mr. McMurtry:** Yes.

**Mr. Renwick:** At the moment that's as far as we can pursue it, subject to management board agreeing that you could go back to them if need arose.

**Hon. Mr. McMurtry:** Yes, if the Law Foundation of Ontario doesn't produce what is anticipated.

**Mr. Renwick:** On the interest adjustment figure? That's the only road back to management board?

**Hon. Mr. McMurtry:** Yes, but any amount I designate is firm.

**Mr. A. Campbell:** That's the statutory designation under the regulation. That amount is protected as a global sum for clinics.

**Mr. Stong:** While we're talking about the funding, there's one particular aspect I am concerned about. I raised this last year and I'm pleased to see that the new application form for legal aid addresses itself some-

what to that area. That is, the recovery from the client for the money paid out on his behalf to the lawyer to defend him.

I noticed that on the form, which is very much more comprehensive than the other one, you ask a lot of questions about salaries and present employer, past employer and Ontario family benefits, welfare assistance and that type of thing. You even get the consent of the applicant, for a period of one year, to inspect any of his assets or security information that would be of assistance to legal aid to ascertain if and how much that applicant should pay back to the plan.

When we keep in mind the rules of the chief judge that trials should be completed within 90 days of their occurrence, I'm wondering if the one-year period is not, perhaps, too long or whether there should be an additional provision, perhaps that there be an automatic review or even a termination of legal aid after six months to a year, at which point there must be a mandatory review of the individual circumstances. I'm wondering if you've addressed the problem that there ought to be an obligation on the applicant to notify legal aid of any change in circumstances or even enforce an obligation on the lawyer accepting the legal aid certificate to notify legal aid if he becomes aware of any change in the circumstances that would automatically terminate the legal aid and have the matter up for review.

To what extent does the ministry intend to pursue recovery if, after the case is terminated within 90 days but before the termination of the year, there's a change in circumstances? Let's say the person is accused of a criminal offence, is acquitted and then gets a job. That's all done within the year that is referred to in the consent. Is it the attitude of the ministry to then go for recovery even after that? Is that part of your plan?

**Hon. Mr. McMurtry:** Of course, we don't have anything to do with the recovery. That's a matter for the plan.

**Mr. Stong:** Fair enough. I guess my question is, should there not be some kinds of guidelines written into this so there is provision for recovery within a year in the event of a change of circumstances of the individual who has had a handout, basically?  
4:30 p.m.

**Hon. Mr. McMurtry:** Yes. Actually I think there is some obligation on the lawyer already to report any change in circumstances that would affect the eligibility. Again, I

must admit this is the first time I have seen the form.

**Mr. Stong:** I've seen the form before; a tremendous form.

**Hon. Mr. McMurtry:** Mr. Campbell, you might want to add something because this is something that I only have a very general idea on.

**Mr. Stong:** My main concern, and I expressed it last year, and I think it is going to be addressed somewhat in this new form, is that of recovery, rather than give a person a handout at the expense of other taxpayers, particularly when his circumstances change so that he can thereafter contribute to his own defence.

You have written into this form a one-year period during which you can reassess him or look into his assets. What is the intent? If you began with that, I can get an idea where you intend to go with this.

**Mr. A. Campbell:** Is there any particular piece of information that you are referring to on the form, or the general policy?

**Mr. Stong:** It is policy, I think. I am wondering if the intent is to recover, and to recover in more circumstances than we do now, from the applicant.

My colleague from Kitchener-Wilmot (Mr. Sweeney) advised me today that he had a complaint from someone in his riding who indicated to him it is not the general policy in that area to review and reassess. I know that in York county—I am not sure that the plan itself initiates a review—reviews have taken place, and on a more frequent basis, perhaps, than in the Kitchener-Wilmot riding. I am just wondering what the attitude is across the province for review of the applicant's circumstances so that he can make contributions.

**Mr. A. Campbell:** There may be a degree of difference from area to area. Perhaps that is a question we could get some further concrete information on and provide you with.

**Mr. Stong:** I would like to know what the policy is for review. In my respectful submission, it ought to be an automatic review after a given time. I would say, in view of the new judge's rules for having cases terminated within 90 days, that perhaps a year is too long, unless you want to go on and recover, even after the case from the client, or from the applicant, has been terminated, if his circumstances change, which I think is a good idea by the way. I think that would be a very good idea.

I am concerned also about the obligation being written into this. Perhaps there ought to be an automatic termination of this legal aid in a year, so there has to be a mandatory review at that time, even if the case hasn't been terminated before the courts. There could be an automatic review of the circumstances. Legal aid can then be given again, or on a different basis.

**Mr. A. Campbell:** There might be situations under which an automatic review might have a chilling effect on somebody who is not very familiar with the legal system in the first place. I can think of a domestic situation of somebody who had to undergo a financial investigation, say in a prolonged custody matter that stretched out over a period of time. Were it done too vigorously, it could have a chilling effect on them.

But I take your point. I will get the information on it.

**Mr. Stong:** I understand what you are doing. All I am saying, I guess, is I was wondering if there is any way we can put meat into the fact that the applicant gives consent to the Minister of Community and Social Services to investigate his position now. Perhaps we should say that investigation must be done under those circumstances by Community and Social Services within a year. Right now, all you have is consent and it is not uniform across the province when that review takes place. If circumstances change for the better, the province should be getting more money from the applicant.

**Mr. A. Campbell:** Yes. I think one would have to be careful on the basis that a legally aided client should be, as much as possible, in the same position as a client of modest means who is retaining his own lawyer. One would have to be careful about an inquisition once a year. I mean, a regular check of some kind might be prudent in certain circumstances if information came up that it was warranted. One can think of an awful lot of cases where a regular review would regularly produce nothing and might not be cost effective.

Perhaps we can take that up with the people in the plan and respond to it before the end of the estimates.

**Mr. Stong:** Even if the case is terminated, if it came to your knowledge that the person's circumstances did change, would it be the intention of the plan to recover from that person? Let us say he was charged with impaired driving and lost his job, but six months after the trial, or well before the end of the year, he got a new job that paid well. Would you then seek to recover?

**Mr. A. Campbell:** I think if it came to the attention of the plan that the financial circumstances had changed dramatically they would reassess the situation. However, in a number of cases it would probably come down to a business decision as to whether or not it was worthwhile going after it. But, as I say, I do not have a sense of the actual details of the financial ranges.

**Mr. Stong:** So there are no guidelines to assist—

**Mr. A. Campbell:** There may well be. Mr. McCourt is indicating a portion of the regulations.

**Mr. McCourt:** Mr. Chairman, at the back of the application form is a consent to inspect assets, which is not, I think, to be confused with the right that the plan has at any time to investigate the person's financial resources other than by just inspecting assets. In section 42 of the regulation it says, "An area director may refer back to an assessment officer"—an employee of the Ministry of Community and Social Services—"any report made by him for further consideration and report." Section 43 says, "An area director may request an assessment officer to make a supplementary report on the client at any time."

The most frequent source of information for an area director is provided under that section of the regulation which imposes an obligation on the practising solicitor to notify the area director if any change of circumstances have come to his attention.

**Mr. Stong:** I guess what has confused me about this is that in the consent to inspect assets, there is a limitation of a period of one year. Maybe I am reading more into that than what is intended. I know what the regulation says—you can inspect or reassess at any time. I thought perhaps what was being intended here is that you would reassess up to one year of the date of the application even though the case is terminated.

**Mr. McCourt:** No; that was not the intent. The intent is to get authority to inspect the assets within a period of 12 months.

**Mr. Stong:** Do you think that will ever be the intent, to recover? Do you think in certain circumstances if you did carry out an inspection you might recover more for the plan and cost the province less as well?

**Mr. McCourt:** I think we could, yes.

**Mr. Stong:** Is that going to be written into the legal aid regulations, Mr. Minister?

**Mrs. Campbell:** He's going to think about it.



**Mr. Chairman:** The minister has indicated it is under advisement.

**Mrs. Campbell:** Could I ask a question? Following Mr. Renwick's questions, you will recall that I made the statement that I understand the plan does now suffer a budgetary shortfall before the end of each fiscal year, and accounts payable at the end of March are held up until the new funding arrives in April.

I would like to know whether that understanding I have is correct, and whether that does not, to some measure, answer the global question of Mr. Renwick as to any shortfalls. That would be the best test, I suppose, on the shortfalls.

**Hon. Mr. McMurtry:** Mr. Renwick was concerned about the clinics.

**Mrs. Campbell:** Yes, I know he was.

**Hon. Mr. McMurtry:** The shortfalls I think you are referring to deal with the fee-for-service aspect of the plan.

**Mrs. Campbell:** Yes, I understand that.

**Hon. Mr. McMurtry:** I will ask Mr. Carter to comment. It certainly has been my experience that in most years we do run out of money by the end of the year and have to go back to management board for additional funds. We have had some lively discussions about it, I can assure you. Perhaps Mr. Carter could further enlighten you, Mrs. Campbell.

4:40 p.m.

**Mr. Carter:** To put the figures on the record, the request was for \$46.4 million, and the approved budget, based on the projections that have been mentioned in terms of the law foundation, is \$43,539,000. So that represents a shortfall.

You are correct that the ministry has endeavoured year after year to make up any shortfall in terms of paying of accounts. That is an understanding we have with the plan.

With reference to the Law Foundation funding for this year, the budget is subject to review if the Law Foundation interest money does not amount to the \$8.6 million that was referred to.

**Mrs. Campbell:** My concern, of course, is that those who for the most part are operating or have been operating in the legal aid field are probably not in the best position to have accounts deferred when they're owing because of the shortfall.

My question was, is the ministry not concerned, given the present amounts allocated, that the plan may not be able to provide the

same level of service as it has in the previous year, for example?

**Hon. Mr. McMurtry:** Certainly the increase in the overall funding of the plan would not indicate that there would be any problem with maintaining the level of service.

As I understand it, the problem which may occur is that there may be an unfair delay in the payment of lawyers' accounts by reason of inadequate funding at the end of the year. My concern is that the accounts are paid. But I have no reason to believe the quality of service is going to be affected.

**Mrs. Campbell:** I think it is now confirmed that these accounts are deferred.

**Mr. Carter:** That would be correct. I think the issue here now in the light of the decision on the clinics is we need to sit down with the plan and look at the budget, the individual allocations.

As was mentioned earlier, the timing is such that the decision on the clinics has just been rendered, so we have to go back and look at the certificate end of the plan. Given that the \$46.4 million request is being met with the figure that I cited earlier—\$43,539,000—one would have to judge what will be the impact on the certificate end of the plan. That is something plan officials and the ministry will have to look at.

**Hon. Mr. McMurtry:** At the beginning of the year, as I follow it, not as closely as the gentleman on my left, on a day-to-day basis, I know there are peaks and valleys of demand. We are dealing with an open-ended system. With all due respect to management board, I think our estimates sometimes are a little better than theirs as to what is going to be required during the course of any year.

When you are dealing with an open-ended plan, you can't be precise as to what demands are going to be made upon it or when accounts are going to be submitted. The lawyers themselves may delay submission of accounts just by pressure of other work; although in the normal course of events lawyers generally want to get paid.

Fundamental to all our concerns is the statutory obligation of the government to see the accounts are paid regardless of the budget figure. Obviously, because I want to maintain an amicable relationship with my colleagues at the bar, I have no desire to see their accounts delayed.

**Mrs. Campbell:** I wonder if we could go back to my opening statement, to which you were addressing yourself. I think the next item following the accounts as I raised them was the matter of the admini-

strative controls in setting the time limits in the preparation of civil legal aid matters. I wonder if I could get some response to my statement on that.

**Hon. Mr. McMurtry:** I am just trying to read some of my own writing. At the present time I can't give you details with respect to the fee structure for the preparation of civil cases. An enormous amount of work went into the negotiation with relation to the new fee schedule. I think we have some information that has been gathered since you raised this, Mrs. Campbell.

Mr. Campbell, you probably feel more comfortable with this sort of arithmetic than I do.

**Mr. A. Campbell:** The tariff revision—we don't have the complete picture here right now—was a very complex set of increases. In most areas there was a significant increase in the amount of money that the lawyer would be paid for an average case.

One significant difference in the tariff revision was that, generally speaking, there was no longer any incentive for taking a case to county court instead of having it tried in the provincial court (criminal division). In general, the levels of fees were straight-line for the various courts, so there would not be any incentive under the new system to go upstairs, as it were.

There were a number of very complicated allocations of systems of block fees, with maximum hours for preparation, always with the possibility of having a note A increase. I think you mentioned the other day a situation where somebody might put a great deal of preparation into a case—

**Mrs. Campbell:** A custody case.

**Mr. A. Campbell:** —a custody case—and get a very good settlement, with one day or half a day, or a settlement at the courtroom door. I believe—subject to anything to the contrary that Mr. McCourt would say—that if you have a situation where you put in extra preparation and as a result of that extra preparation you really achieve an extraordinary result, you may have saved what would have been a two- or three-week trial. I believe that is something, if the lawyer can substantiate it, that would be the subject of a possible discretionary increase under Note A.

I don't have the text of the new note A in front of me, but it does permit the legal accounts people, in their discretion, to make an increase in relation to preparation.

I don't know if there has been enough experience under the new tariff to give a

total picture of how the accounts are coming in differently under the old system and under the new system. It was certainly hoped, to as large an extent as possible, to block fees with an adequate time limit for preparation, always making allowance for special cases through note A, and having a special tariff for the particularly serious criminal cases such as trafficking in narcotics, most of the homicide cases and a lot of the cases in section 429.1.

4:50 p.m.

**Mrs. Campbell:** I appreciate that, because the information I had was related to a complicated custody matter which would have involved expert witnesses had it gone through the court system. The estimated time was two to three days' court time. The matter was settled, I understand, the day of the trial.

**Mr. A. Campbell:** Yes.

**Mrs. Campbell:** The decision appeared to have been—and I will have to go back to see whether there was room for any kind of further representation—that the lawyer got one day's court time and an amount for preparation proportionate to one day in court. It would seem to me that it might create a disincentive in lawyers to settle cases, if they had done a great deal of preparation only to find that this was a problem.

**Mr. A. Campbell:** If we are speaking of a mill-run case, you get what the tariff says. If there are extraordinary situations, note A says—we have at least one copy of the tariff setup here we can provide—

**Mrs. Campbell:** I'd like to see it.

**Mr. A. Campbell:** "Such fees may be increased by the legal accounts officer in those cases where in his opinion an increase is justified, having regard to all the circumstances including the nature of the work done, the complexity of the case, the result obtained and any other factor which would warrant an increased fee." Note A does not apply in the mill-run case, but there is enough discretion built into the system so that where the results of the tariff ordinarily applied would result in a real injustice, they can have another look at it.

**Mrs. Campbell:** Thank you. You say now that you have eliminated the problem of differentials in tariffs in the various courts.

**Mr. A. Campbell:** I don't know if it has been entirely eliminated. I am not sure about the cases in section 429.1, where you have some pretty strange rights of election up and down between various levels of courts. But,

as I understand it, generally, if there ever was a financial incentive to "go upstairs," that incentive has been removed.

**Mrs. Campbell:** Thank you. That answers one of my problems.

**Mr. Chairman:** Are there any further questions?

**Mrs. Campbell:** I am just trying to get out the answers to my opening statement. I guess that's the situation.

This new form, I take it, is the total form. Who determines the eligibility? In the past, as I understand it, if people were on family benefit assistance or general welfare assistance there wasn't a discrimination in those cases. But in other cases there was a discretion in the director. I would like to know whether, from this, the discretion is tighter so far as the director is concerned; in other words, if we have eased a bit on the FBA and the sort of ComSoc-type of case and tightened up at the other end. What is the discretion at the moment?

**Mr. A. Campbell:** I thought that if you were on general welfare assistance or family benefits you pretty well got it automatically without very much of a hassle.

**Mrs. Campbell:** That's what I'm talking about, yes. But the ones where there is discretion to the director are the ones that I am somewhat concerned about. Is that tightened up? What is the status of it now, having in mind our present economic problems in the province?

**Mr. A. Campbell:** In terms of discretion to refuse in a civil matter on the basis that a person doesn't really have a good case or that it's not a case that should be brought, I don't think the eligibility criteria would change that. I don't think the new application or the Community and Social Service number guidelines as to when you get it and when you don't would affect generally the situations in which the area director would exercise his discretion. Before the new eligibility criteria, the old criteria were so far out of date that the area directors—I think in some counties it was in almost 50 per cent of the cases—were automatically allowing appeals, if that's the right word, in granting legal aid where they wouldn't get it on these criteria, because these criteria hadn't been changed for many years. I don't know if this is an area where Mr. McCourt might be able to help or not.

**Mr. McCourt:** I think one of the effects of these new criteria and of this form will be that there will be fewer occasions on which

the assessment officer and the area director will disagree.

**Mrs. Campbell:** That helps.

**Mr. McCourt:** The area director's discretion remains unfettered, of course.

**Mrs. Campbell:** Yes.

**Mr. Chairman:** If I may ask a supplementary, on what Mrs. Campbell is dealing with, I find that in the cases where people are turned down for legal aid, many are women who are either in the middle of divorce proceedings, or have been deserted or, unfortunately, widowed. The husband is deceased. There is some kind of wrangle with the estate. They have a share in equity in a family home, but there is some dispute over that equity. I have run into a series of these cases.

Surely, with your ability to get back the money within a reasonable period of time—you have said you can do that—it would seem more humane to grant the legal aid and recollect if the finances, then, are loosened up in instances like this.

**Mr. McCourt:** Mr. Chairman, I am not aware that there is a significant incidence of the types you describe.

**Mr. Chairman:** I have run into three in the last two years. That to me is significant, considering the number of legal aid cases I get.

**Mr. McCourt:** Yes. It may well be significant.

**Mr. Chairman:** It may be a coincidence also.

**Mr. McCourt:** Yes. One of the most frequent reasons for the refusal of legal aid is the unwillingness of an applicant either to agree to make cash repayments on a monthly basis, or to sign a lien to the law society on a house which the applicant owns or has an interest in. It may be that the cases you ran into are of that type. I don't know.

**Mrs. Campbell:** I did ask the question how many new clinics which have submitted applications for funding are able to be accepted under the new budgetary provisions?

**Mr. A. Campbell:** I would defer to Ms. Mossman on that.

**Ms. Mossman:** Mr. Chairman, approximately 15 applications have been received for new clinics for 1980-81, but the clinic funding committee has determined that it is more appropriate at this point to stabilize the development of new clinics. The clinic funding staff is becoming a bit more sophisticated in the work that needs to be done in opening new clinics. It takes a fair amount of energy to do that.



On that basis the committee decided to include sufficient funds for approximately four or five new clinics in the 1980-81 fiscal year. That means some of the other applications will need to be deferred, as much by reason of the inability of the clinic funding staff to cope well with that number of new clinics within that period.

The decision about where new clinics will be located has yet to be made. No commitments have been made pending a decision about the funding to be available.

**Mrs. Campbell:** I was asking also about the special projects outlined last year in the estimates and how they are affected by the budgetary provisions. I am speaking about the criminal law research facility, the provision for special investigators, and social workers for legal-aid lawyers. I asked: "How are these programs working out? How are they funded at the moment? Are they affected in any way by the budgetary provisions of this year?"  
5 p.m.

**Mr. Carter:** The research facility is in operation effective January 1, 1980. I think it's worth noting that the staffing is one director, three research assistants and two clerical support staff. It is my judgement, based on the budget allocation as has been determined that that will continue in 1980-1981.

I am advised there have been approximately 300 inquiries to date from January 1, and in my discussions with the staff of the plan, it is reasonably successful. Of course, it's very new, only three months in operation.

Regarding the investigator and social work projects, the plan staff and ministry staff have received a preliminary report on various directions to go to introduce investigators and social workers into the plan. I must say the plan and the ministry have not reached any decisions in this respect at this time.

I am not in a position to know what the impact of the 1980-1981 budget will be on the investigator and social worker projects. At this time I think it's important to note that we have the preliminary report. We have to review that and make judgements.

**Mrs. Campbell:** Thank you. Then I address myself to SLAS. I don't know whether that's how you pronounce it but you know what I'm talking about, the questions I asked about the student legal aid program and my specific concerns about the experience program and the relationship between the two.

**Mr. Carter:** In 1979, the plan had in total 159 summer students who came from the Experience '79 program, as it was called. Again in 1980, there will be an Experience

'80 program. All ministries, including our ministry, had a cut in summer student allocation for the Experience '80 program of approximately one third or 33 per cent.

In our allocation of students within the ministry and to the plan, we have come out with a total of 130 students for the clinics and the student legal aid societies which, it is recognized, is a reduction from the 159, but it is a reduction of 18 per cent and not the full 33 per cent. We did manage to pull students from other programs to support student legal aid societies and the clinics. So the total for 1980-81 is 130 students.

**Mrs. Campbell:** I was advised that 10 more jobs were provided through the AG allotment for Experience programs as a result of complaints. Is that correct?

I am also advised that there were seven jobs from the ComSoc allotment which went to Queen's University SLAS. Is that correct?

**Mr. Carter:** That's basically correct. On the first round of allocating the 33 per cent cut we went through the various allocations and looked at what an across-the-board reduction would be by 33 per cent. Our first judgement was approximately one third reduction from the 159 which I think came out to 113, more or less. Then we attempted to reduce other programs within the ministry and we have come up with a total of an additional 17 to bring it up to 130.

In the process of doing that, of course, we had to take students from other areas, but admittedly the number of 159 was high in 1979. It would have been a considerable reduction to go to 113.

**Mrs. Campbell:** I don't know if it's proper for me to ask this question of you, I think rather it's the minister.

Is there not some concern when these summer jobs are cut back, in view of the fact, as I understand it, these are volunteer organizations during the school year? If the students are paid during the summer season, then it seems to me you would have a group to continue the program on the voluntary basis. If that is cut, how does it affect the program? It must affect it in some way.

**Hon. Mr. McMurtry:** All I can say, Mrs. Campbell, is the decision to cut back in Experience '80 I would not rank as one of the more intelligent decisions made by the government of which I am, of course, proud to be a member.

**Mrs. Campbell:** I take it then that, in substance, is your answer. It does bother me because from all I hear, these programs are an important complement to the provision of legal aid in the province.

Hon. Mr. McMurtry: I think they are.

Mrs. Campbell: How do we go about creating greater intelligence in the government that you so proudly represent here?

Hon. Mr. McMurtry: I'm sure we all have our own views. They may not all coincide.

Mrs. Campbell: Seriously, is there any indication that there will be some study of this situation as a result of the change from last year to this year, and will there be a report to us on just what the effect has been on the program?

Mr. Carter: At the end of each summer, we review the impact of the allocations we have made both for Experience students and regular students. This year, in recognizing there has been a reduction to the clinics and to the student legal aid societies, we most definitely will expect to have a review between the ministry and the plan as to the impact of that reduction. I know the concern that has been voiced by the plan in terms of the reduction.

Mrs. Campbell: I shall look forward to getting some of it, if circumstances remain as they are.

Mr. A. Campbell: One of the other problems you haven't raised is that because of the timing of the decision-making, it can sometimes put individual students and individual clinics into a real bind because nobody ever knows until too late in the year what the ministry is going to get from the Experience program, whether or not we can rob other programs in the ministry to get students to assign to the Experience program, whether or not we will be able to arrange for an income supplement to the very minimal amount of money paid by the Experience programs which many law students who have family responsibilities simply can't afford. There are even more problems than you have indicated.

It's a serious concern every year. In some years the Legal Aid Plan has been able to find additional funds by squeezing some other part of its program to keep the clinics going over the summer. I think the point you made is the most essential one, that unless the students are there during the summer the whole operation would collapse because it requires that core of continuity during the summer when the students are not doing it on their free time.

It has been a very serious problem every year and it has put the ministry and the individual clinics into a difficult position every year, to say nothing of the individual students who don't know until the last minute

whether or not they have a job, where they're going to go. It's a bad scramble every year.

Mr. Warner: From the number of students by which you have been reduced in that Experience program, can you give me any idea as to how much money that represents? You've lost 29 or 30 students. Can you give me a rough calculation of what that number of students represents in dollars that will now be saved by the province?

5:10 p.m.

Mr. Carter: On the numbers in question from 159 down to 130, which would be 29 students, I think you would run an average of \$2,400 or \$2,800 per student.

Mr. Warner: That's how much?

Mr. Chester: Sixty-nine thousand dollars.

Hon. Mr. McMurtry: It's called nickel and diming.

Mrs. Campbell: Exactly.

Mr. Warner: Yes, it is. I appreciate the minister's comments. That's backward thinking. The program's valuable. It's valuable to the students and to the clinics involved. Why the government would cut out jobs like that for a pittance—

Mrs. Campbell: It isn't just the jobs that are lost. It's the service. If they're not there in the summer, they will not be there in the school year.

Mr. A. Campbell: If they're not there in the summer, you have clients with court dates coming up with things that have to be done, limitation periods coming up.

Mrs. Campbell: Exactly.

Mr. A. Campbell: Another point is, although I'm not sure what the hourly rate has been cranked up to this year, if a law student has been doing student legal aid society work for a year or a year and a half and then works on it over the summer, the kind of work that student is doing for his clients is probably many more times cost-effective than a lawyer who's making two or three times what that amount would be for the specific kinds of problems they're dealing with.

Mr. Warner: I understand that. I know you do, the minister does and I assume whomever you have to send your requests to understands. Is it purely a budgetary reason for the cut in the number of positions?

Hon. Mr. McMurtry: We haven't heard any other reasons.

Mr. Warner: It's such a small amount of money. It seems ludicrous that it would be a

budgetary consideration when the amount of money involved is so minuscule.

**Mr. Carter:** If we refer to page 21 in the notes to the estimates, there we have the exact figure for the reduction for the Experience '80 program, which is \$181,200. That's across the entire ministry. The reduction vis-à-vis the clinics as mentioned, the 29 students, would be a part of that, which has been calculated at roughly \$60,000.

**Mr. Warner:** I guess we can lay this one on the Management Board of Cabinet. It's not involved with the minister.

**Mrs. Campbell:** The difficulty is, I suppose, this committee is in no position to move any motion in this regard. The chairman would rule us out of order. I don't know what we can do to express to the government our concerns.

**Mr. Warner:** The committee could request that the chairman of management board appear before the committee to explain his dumb decision.

**Mrs. Campbell:** I don't think that is going to get us anywhere.

**Mr. Warner:** It would be a way for the committee to express its concerns.

**Mr. Chairman:** You can also refuse to vote the money on this vote.

**Mrs. Campbell:** That would be great. Then they won't have anything. That's a dumb thing to do, too.

**Mr. Chairman:** It could also be considered no confidence.

**Mr. Warner:** Perhaps the other thing we could do is to express our deep dismay over this decision with which we have to disagree and put that in writing from this committee to the chairman of the management board.

**Mrs. Campbell:** I would like to see that message go forward and perhaps the most useful way to make a point, such as it may be, is to incorporate with the letter the discussion which will be in Hansard as a result of our deliberations. I don't look at it purely on the basis of the money.

We all know we have to be careful, but it is the service, the dislocation—I feel a deep concern for the system itself. It is more cost-effective to have this operation continue than to engage lawyers in the same business.

**Mr. A. Campbell:** If it doesn't continue, it destroys the clinic. You can't close down over the summer because you have to keep up your professional obligation on each client's file. You have to look out for court

dates, limitation periods. You have to use each summer.

If you overlap half the students from last year and half new students there's a training process, there's a file review, file transfer process. It is absolutely essential to have the people there during the summer for the continued operation, let alone the continued help of the clinic in the service it's providing to the clients.

**Mrs. Campbell:** Could you tell me how, with this kind of cutback in numbers, you approach the allocations? How do you try to see that you don't actually close the clinic?

**Mr. Carter:** When the allocations came through on the first round, which was the figure of 113 mentioned, it was necessary for me to confer with Mr. McCourt. As I understand it, the plan in effect at that point had 113 students to allocate. Perhaps Mr. McCourt could take it from there.

**Mr. McCourt:** Yes, at that stage we looked at each student legal aid society and clinic bearing its pro rata share of the 33 per cent reduction to which Mr. Carter referred. Subsequently, when further positions were found increasing the total number available, Ms. Mossman and I got together because of her involvement with the community clinics, some of which opt to use students through the Experience '80 program, and looked at a distribution which we finally made. This took into account, we believed, a reasonable geographic distribution among the various centres, namely Windsor, Toronto, London, Kingston and Ottawa—those five locations. We came up with a distribution of the positions which gave every clinic and every student legal aid society a half-decent chance of continuing to operate during the summer.

**Mrs. Campbell:** I appreciate the thought that's gone into it, but I am truly concerned.

**Mr. Chairman:** I've instructed our clerk to send a copy of the Hansard on this particular matter to the Chairman, Management Board of Cabinet with a note saying this expresses the concern of the committee.

**Mr. Warner:** I appreciate that. In that regard, I'm a bit puzzled. In this nice little book you gave us, Notes on Estimates—this little goodie—on page 21 it has, "Item 1, main office." It shows in there, as you mentioned, "Reduction from 1979 level—Experience '80" and, of course, in brackets "181.2." I assume the brackets mean that's a reduction.

Perhaps it's just coincidence, but then down under "Services" there's a transfer of 181.7. There are other reductions, and I understand there seems to have been a book-



keeping shift for the native court-worker program. It's shown as a deficit in one place and as an entry in another. I wonder if you could explain those figures a little better for me, why we have 181 as a deficit in one place and 181 under "Services" transferred from other standard accounts. That doesn't tell me very much.

**Mr. Chairman:** Mr. Carter, would you give us an explanation?

**Mr. Carter:** If we go to the first line at the top left, "Salaries and Wages," salaries and wages have been reduced in 1980-81. One component of that is the 181.2, which is Experience '80. That is the reduction. That money has not been afforded to the ministry.

The figure towards the centre under "Services," the 181.7, which is an addition to that item line, is an addition from other standard accounts which would be additions into the main office item 1 vote from other areas within the ministry. Those would be additions. They're nonsalary additions. We'd have to go through the various components of making up the budget to locate what the 181.7 actually was.

**Mr. Warner:** Is there a separate list of those items that were included?

5:20 p.m.

**Mr. Carter:** The components of the 181.7?

**Mr. Warner:** Yes.

**Mr. Carter:** I don't have that here with me, but it could be put together. But that is an addition to services which is nonsalaried transfers from other areas within the ministry. The other item, 181.2, is salary and wages and is, in effect, a loss from 1979. I think it's just coincidental that those figures are out by \$500.

**Mr. Warner:** I am much the wiser now.

**Mr. Lawlor:** I would like to know what those services are, if you could get it to us, and what the list might comprise as to that switchover.

**Mr. Carter:** Yes.

**Mr. Lawlor:** There is too much juggling going on in the Attorney General's department.

**Hon. Mr. McMurtry:** We have to juggle a little bit to keep afloat.

**Mrs. Campbell:** Mr. Chairman, the final aspect of my remarks had to do with the Law Society of Upper Canada.

**Hon. Mr. McMurtry:** Yes. I made a note of that, Mrs. Campbell.

**Mrs. Campbell:** I think some of the response seemed to have been given today, if I didn't misread your statement.

**Hon. Mr. McMurtry:** That is correct. With your interest and general interest in this report, we may have set a record when it comes to tabling a report in relation to the time that it comes off the press. The report was received by me this morning, hot off the press, and it was tabled this afternoon so our colleagues might have the benefit of hearing the wisdom of the professional organizations committee as soon as possible.

In one of the recommendations, as I mentioned in my statement, it is recommended that a lay person be appointed to the various governing bodies of these professions to monitor the complaint procedure.

**Mrs. Campbell:** The law society keeps saying it doesn't have the facilities with which to deal with these matters. I note in your statement today you did make reference to competency. I am not sure that goes to the root of some of the complaints I have had, which were not a matter of competency but a matter of conflict and so on, where the law society seems to say: "We don't have the facilities. We can't examine it." They seem to have a rather cursory overview of the situation unless somebody says a lawyer gets his hand caught in a cookie jar.

I would hope it isn't just a matter of competency, that we might be looking at the case I have given you where there does seem to be at least some prima facie evidence of a conflict, as the lawyer acted for two parties and paid out money when it would appear there was at least some controversy between the two parties. Is that contemplated in this?

If the lay person is monitoring, don't we first have to know we have the facilities so that if monitoring, we are monitoring something usefully?

**Hon. Mr. McMurtry:** I am not sure I understand this issue of the purported lack of facilities. The issue of competency is, I understand, to be discussed in the report. I have not read the report. I have looked through it quickly.

**Mrs. Campbell:** I appreciate that. Neither have I.

**Hon. Mr. McMurtry:** The recommendations indicate that the concern of professional bodies should go beyond the traditional concerns—for example, misconduct—so far as the legal profession is concerned; that they should be more concerned with the level of competency. This is my understanding without having read the report.

When you mention that the Law Society of Upper Canada has said to you, Mrs. Campbell, that they don't have the facilities—

**Mrs. Campbell:** "... nor the jurisdiction for determining credibility, which would appear to me"—and this is a letter from an officer of the law society to my leader—"to be the sole issue now."

I thought they had the jurisdiction. What I am getting at is this. Misconduct with the law society has traditionally really amounted to putting your fingers in the trust account. It has not gone to other kinds of misconduct or other unprofessional conduct. Then, of course, there is the question of competency as well. I am just saying if we have a lay person there, a lay person is not going to accomplish anything, unless the law society also has to accept a greater responsibility.

**Hon. Mr. McMurtry:** I know Mrs. Campbell referred to this letter yesterday. It might be helpful if I had a copy of the letter, Mr. Chairman.

**Mrs. Campbell:** I'll try to get for you. I just felt I was being pretty lengthy and tried to synopsise it here. But I have a file of correspondence. Would you see that we get the full file for the Attorney General?

**Hon. Mr. McMurtry:** It has been my understanding that the law society, through the disciplinary procedures, is called upon frequently to make judgements on the issue of credibility—

**Mrs. Campbell:** That was my understanding.

**Hon. Mr. McMurtry:** I'm sure they do. I used to appear before the discipline committee of the law society both as counsel for the law society and for individuals who had been charged with misconduct of one kind and another. The members of the discipline committee who hear the matter might well be called upon, like any court tribunal, to make findings of credibility.

If you could supply me with a copy of that letter, it would be helpful.

**Mrs. Campbell:** I shall indeed—and the correspondence, so that it won't be out of context.

I think the other matter that I did refer to was advertising and consumer protection. I take it also, that your understanding is that the recommendation—

**Hon. Mr. McMurtry:** Yes. The rules in relation to advertising should be further relaxed so the consumer—the client—might have a better understanding of the fee schedule than they are given now. That is contained in page 256 of the report, recommendation 10.01:

"The Law Society of Upper Canada should bring forward to the Attorney General, in the form of regulations subject to Lieutenant Governor in Council approval, revised rules of professional conduct, providing that:

"(a) Every member of the law society be entitled to advertise such information as office hours, languages spoken, educational qualifications, professional affiliations, preferred areas of practice, representative clients (with consent), references, publications, and fees charged for initial consultations, hourly rates or fixed fees for services;

"(b) members advertising a service where such advertising is misleading or deceptive be subject to the professional misconduct provision of the Law Society Act, and be subject to disciplinary proceedings;

"(c) price and nonprice advertising by members be confined to the print media." I would speculate that this particular recommendation will probably provoke a good deal of debate and healthy discussion among the ranks of our profession.

5:30 p.m.

**Mrs. Campbell:** No doubt. I think there are two loose ends as a result of the opening.

**Hon. Mr. McMurtry:** I have some of these other matters. I have not forgotten, Mrs. Campbell.

Regarding Thomas Henderson, there was an investigation, and there was a report to me. One of the concerns was that he had been harassed and unfairly dealt with, inasmuch as a charge had been laid against him that was of a frivolous nature and was subsequently withdrawn.

My perusal of the report—which I reread; I had forgotten, quite frankly, specifically what had been contained in it until I had an opportunity between yesterday and today to look at it—would indicate there were valid grounds for laying the charges. The withdrawal of the charge was based on other matters, including problems that developed in respect to the presentation of the case.

I would just as soon not discuss it further, other than to say that Mr. Takach and Mr. McLeod would be quite happy to sit down and discuss the details of the report with you, if you are interested in pursuing that.

**Mrs. Campbell:** I think it's always difficult when a public statement is made as a result of questions. There's no doubt about that. "An inquiry is being made"—and then we don't get anything further. I can understand in some cases why. I should like, however,

to have the further specifics on this matter in whatever form they can be made available to us. My colleague is indicating his interest as well.

**Hon. Mr. McMurtry:** Our review of the matter led my senior advisers to form the view that there were reasonable and probable grounds to lay the particular charge against Mr. Henderson. The fact that the charges were subsequently withdrawn does not support the allegation that there was no evidence to proceed in the first place.

I have a very lengthy report about Mr. Henderson's conduct which certainly would warrant, in my view, the action that was taken. I don't think that it would be fair to discuss this publicly.

**Mrs. Campbell:** I can understand that.

**Hon. Mr. McMurtry:** Again, Mr. Takach is quite prepared to review the matter with you and any other members of the committee who are so interested.

**Mrs. Campbell:** The other matter is this, Mr. Chairman. You will recall that the Attorney General has challenged me, in a sense, to provide cases to support my statements with reference to the police, and with reference to the judges' position now, since the persuasive tactics were taken.

I have given consideration to that, and I would like to say that I do what is best evidence, I think. Three lawyers, to date, have indicated that they would very much like to bring their cases directly to this committee. I wondered whether or not we could get permission, if we're all available a week from next Wednesday afternoon, to hear these people give their direct evidence at that time. That would be better than my relating it, and it would not take anything from our estimates time.

I think the matter is important enough that we should get the facts on the police procedures, the crown attorneys' attitude, the attitude of the justices of the peace, and as well the judges' position with reference to orders in which formerly they were adding an order directing the police. Now, apparently as a result of the persuasive tactics, I am informed they are not continuing those orders.

I would just ask, however, if the Attorney General would accept, from any lawyers attending, a statement as to the circumstances in cases involving judges and permit them to give him the names of judges privately, so that they are not placed in an uncomfortable position by coming before the committee to

give the Attorney General the information he wants from me.

**Hon. Mr. McMurtry:** Do you mean this as part of the estimates?

**Mrs. Campbell:** You asked me to provide you with cases, and I don't know how many cases I need to persuade you to review the policy. I have three lawyers now who are in the field and are prepared to give you the necessary information directly. I felt that, if they were permitted to come, we might ask to sit Wednesday afternoon so that we would not be detracting from our estimates time, but so the committee would still have the benefit of the information that I have.

**Mr. Warner:** That's Wednesday, April 30?

**Mrs. Campbell:** A week from next Wednesday. Next Wednesday we are not sitting.

**Mr. Warner:** Next Wednesday is April 23.

**Mr. Chairman:** Would you put it in a motion so that we may deal with it, please?

**Mrs. Campbell:** Yes.

**Hon. Mr. McMurtry:** I would be happy to have the information, although I don't know that this is the appropriate forum. But if the lawyers want to come and discuss it with the committee, and if representatives of the Ministry of the Attorney General can be here that Wednesday afternoon—I'll be here, of course, during the estimates in the morning, but we have a rather important cabinet meeting that day that really should command my attention.

**Mrs. Campbell:** I don't want to inconvenience the minister, but time and again when I have expressed concerns I have been challenged to provide cases. In law, the best evidence is direct evidence and I would like the Attorney General to have the benefit of that direct evidence.

**Hon. Mr. McMurtry:** The only thing I would say is I take slight issue with the use of the word "challenge."

**Mrs. Campbell:** I think it is a challenge.

**Hon. Mr. McMurtry:** I don't regard it as an adversarial process in that respect. I'm just simply indicating to you that I'm very happy to have any information you can provide me.

**Mr. Warner:** It's closer to a jousting match.

**Mrs. Campbell:** Basically it was a challenge, and I want to meet that obligation because this, to me, is a very serious matter. If the Attorney General wishes the information, I would think he would prefer to have it directly rather than through my intervention between the lawyers and him.



5:40 p.m.

**Mr. Warner:** Perhaps, Mr. Chairman, if it would be of assistance, if the Wednesday afternoon is not convenient for the Attorney General but he intends to be here in the morning, I would be willing to forego half of the allotted time we use off the estimate. In other words, we generally have two-and-a-half hours in the morning from 10 to 12:30. I would be willing to apply one-and-a-quarter hours of that time against the estimate time, if that would help to ensure that the Attorney General's schedule would be kept intact.

**Mr. Chairman:** My concern is that I doubt we can do justice to three witnesses, Mrs. Campbell, in an afternoon. I think we are going to require more time than just one afternoon.

My suggestion would be that Mrs. Campbell and the Attorney General get together and agree on a time and then Mrs. Campbell can move her motion, perhaps tomorrow. Judging from the facial expressions of people, the committee would find that most useful. It is simply a matter of working out the mechanics. So perhaps you can move your motion.

**Mr. Warner:** It's more than facial expressions.

**Mr. Chairman:** You were on record, but the others nodded, Mr. Warner.

**Mr. Warner:** Generally they can hear me.

**Mr. Lawlor:** It would mean certain understandings have to be obtained, one of them being that this is not a precedent-setting procedure. I don't think this committee has engaged to my knowledge in such an exercise. There seem to be multiple injuries, various forms of human affliction out there, that we could, if we exposed ourselves in this way, be forever preoccupied with listening to.

The normal procedure in this context, if I may say so, is for these people to approach the Attorney General with his courtesy, at least, of having the member involved and other members who may be interested attend upon his office; that the public forum exposure in this particular context could lead to considerable embarrassment by slips of the tongue, if nothing else. However, having said all that, I would be prepared to go ahead.

**Mrs. Campbell:** Thank you.

**Mr. Chairman:** Perhaps Mrs. Campbell can come back with a motion that will also include some guidelines—rules of conduct are too strong—for the committee in proceeding with the matter.

**Mr. A. Campbell:** Mr. Chairman, could I respectfully point out that there could well be serious difficulties if any of these cases were continuing in one way or another before the court?

**Mrs. Campbell:** I think all of us are quite aware of the sub judice rule.

**Mr. Chairman:** We are aware of that.

**Mr. A. Campbell:** The other difficulty would be, with respect—and I hope I am not being presumptuous—if this committee put itself into a position of second-guessing the discretion exercised by a judge in an individual case, having heard only the side of one of the litigants through their particular lawyer who may or may not like what the judge did in the particular case.

**Mrs. Campbell:** The purpose of it, Mr. Chairman, was as I had stated; it had been brought to my attention that since the persuasive activities of the Solicitor General addressed to the court not to continue this practice had taken place, judges were now reluctant to make those orders. It is in that context only.

I am not seeking to review judges' orders on the basis of discretion, but rather to get the evidence that the Attorney General seems to want, that perhaps his persuasive tactics went further than he himself wished them to go.

**Mr. Chairman:** Thank you, Mrs. Campbell. Before we adjourn, I will mention that I instructed the clerk to try a new experiment with the seating arrangement. That is, I found yesterday when there were a number of press here, they were not able to use the tables because of the staff of the Attorney General.

We don't have that problem today. I've placed some extra tables up here. I think it might be useful if in our various estimates and deliberations, the staff of the minister used the tables back there. They're more accessible to the minister then to advise him.

We might try that to see how it works. If members of the committee have any opinions on that, they can let me know.

We may have a vote in the House so we stand adjourned until tomorrow after orders.

The committee adjourned at 5:46 p.m.

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No. J-3

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**

Friday, April 18, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC



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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, APRIL 18, 1980

The committee met at 11:20 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

**Mr. Chairman:** I see a quorum.

On vote 1401, law officer of the crown program:

**Mr. Nixon:** On a point of information: I haven't been able to attend all of the sessions of this committee. I have one or two questions in clarifications about legal aid. I would like your direction when this might be in order.

**Mr. Chairman:** We will take it under the appropriate vote. I would be happy to advise you when that is coming up, Mr. Nixon.

**Mr. Nixon:** This week or next?

**Mr. Chairman:** Next—

**Mrs. Campbell:** No, we are not sitting next week.

**Mr. Chairman:** I will ask the clerk to advise you. It won't be next week at the rate we are going.

**Hon. Mr. McMurtry:** We have been talking a good deal about legal aid under vote 1.

**Mr. Chairman:** Would you like to make your clarifications now?

**Mr. Nixon:** It would be more convenient. The matter has come to some local attention in my constituency, perhaps brought to a head by the statement made last week by the Attorney General's colleague, the Provincial Secretary for Justice and Minister of Correctional Services (Mr. Walker). The statement has elicited strong response from defence counsel in our area who have taken the minister's statement almost phrase by phrase and put an alternative interpretation. They are extremely critical.

Our local judge was interviewed in this connection. One of the quotes that concerns me is as follows, and I quote from the Brantford Expositor of Thursday, April 17: "And, of course, there is the element of human nature. Some lawyers abuse legal aid. When they are paid by the hour, time isn't as important."

Just by coincidence, the News Update from the Legal Aid Plan of March 1980 also came across my desk. This might already have been discussed here. There were two quotes that certainly came to my attention, since one was from Mr. Justice W. Z. Estey of the Supreme Court of Canada. I am sure all the lawyers are familiar with what he said, but I had not seen it before. The statement he made to the recent meeting of the Nova Scotia bench and bar is as follows:

"Legal aid will be the single most important issue of the 1980s. Legal-aid cases are plugging the courts in all 10 provinces and the decade ahead must see some restrictions on universal access of the common man to the common law."

A very strange quote indeed.

**Mr. Renwick:** A very strange man.

**Mr. Nixon:** He happens to be the chief justice.

**Hon. Mr. McMurtry:** The former chief justice.

**Mr. Nixon:** There is a further quote from Chief Justice Gregory Evans—I think I used to know him in a previous incarnation—of the Supreme Court of Ontario's trial division. I want to quote him:

"I think we're legal-aiding ourselves right out of business in the sense that so much stuff is legal aid that the ordinary guy just can't afford to go to court. If he could afford it, he can't get his case on because of the impact of legal aid. Legal aid is open-ended, there's no cap on it, and some lawyers just go merrily on their way and not at a very great speed. The cash register rings continuously if the lawyer gets hold of a good legal-aid case." That ends the quote from Chief Justice Gregory Evans of the Supreme Court of Ontario's trial division.

I appreciate the Ontario Legal Aid Plan News Update publication for bringing these quotes together, so that people who don't follow as closely as they might have a chance to get these views all at once. Here is another quote that concerns me: "The police chief of Windsor, John Williamson, charged on February 20 that legal aid was to

blame for the city's 44 per cent crime rise in the last decade. In past years the chief has blamed "lenient"—by the way that's misspelled in the News Update—"court sentences for increasing crime. But in presenting statistics to the Windsor Police Commission this year he commented: 'I'm concerned about a person who lives a life of crime, who can get continual legal aid and come back again and again. One or two bites of the apple and that's it. That would stop the backlog.'"

I should take the time of the committee to quote opinions that were registered and reported in News Update contradicting in strong terms the views expressed by the former chief justice of Canada, the present chief justice of the Ontario trial division and the present police chief of Windsor. John Bolby, a former classmate of mine and graduate of McMaster University, was one of the principal lawyers commenting on the matter. A number of lawyers in the Windsor area took exception to the statement by the police chief.

With one or two notable exceptions, on this committee is a collection of people with a rather uniform approach to this matter. I tend to represent in this Legislature a very small minority. I have expressed my concern with these matters. I feel it's my responsibility to put before the Attorney General the views of these eminent jurists and ask for his comments.

**Hon. Mr. McMurtry:** I am familiar with some of what you have quoted, but not all. I have not seen a copy of this particular News Update. I have to say, with the greatest respect, that I must fundamentally disagree with some of the comments. I will be more specific.

The Legal Aid Plan as it was instituted in 1968 represents one of the most important reforms in relation to the administration of justice that has ever occurred in this province. I regret that it does not often receive the support it deserves from the public, members of the bench and, obviously, some police chiefs.

I don't think there's any question but that judges on occasion have reason to be frustrated by trials that they believe are needlessly protracted. There is a very understandable human tendency to blame this on the fact that there is a legal-aid certificate—to put it crassly, a meter is running—and that, for that reason, lawyers are encouraged to prolong the case.

With the greatest respect to some of these distinguished judges, I have to say that I do not agree that legal aid is the villain in the

piece. I think part of the problem is that there are—and I have said this in the past—a certain number of fairly inexperienced lawyers practising in the courts. I have expressed my concern about this on previous occasions when I discussed with the Legal Aid Plan in Ontario the need to encourage a greater degree of specialization in the area of criminal law so that the members of the public would be better served.

**11:30 a.m.**

The legal profession has grown greatly in size in recent years. When I was called to the bar 22 years ago there were in our class 240 or 250 people called to the bar. Recently, the number called in spring has been approximately 1,000. In my brief career, the number of laweys being called to the bar has quadrupled. As a result, there are some lawyers practising in the courts who unfortunately are inexperienced and it is their inexperience that, in my view, tends to prolong some of these trials.

In any human system there are bound to be abuses and I am not suggesting that there are no lawyers who abuse the legal aid system. It has been represented to me by many lawyers who operate within the plan daily that there is abuse, but I believe this deliberate abuse is minimal and has been exaggerated.

There is no question but that some of the rulings of the courts themselves have tended to prolong the trials when it comes to voir dires in relation to wiretap evidence and the introduction of confessions. The courts themselves have the authority to speed up some of these trials. Many judges are reluctant to get involved in that process, a reluctance that didn't exist 20 years ago when judges made it known if the case had been prolonged unduly and not in anybody's interest. As a young lawyer I was told that in no uncertain terms.

A certain laissez-faire attitude has grown a little where judges feel that perhaps they should remain somewhat detached. It's a difficult judgement call. For example, when there is a long cross examination the lawyer may be the only person who knows whether or not it is going to lead to something relevant. Sometimes it does lead to something relevant but, unfortunately, often it doesn't.

**Mr. Renwick:** Many times it's accidental.

**Mr. Nixon:** I feel I have intruded into the robing room.

**Hon. Mr. McMurtry:** This causes understandable frustration on the part of judges.

To me the fact that people who appear in the courts of our province charged with crim-



inal charges are legally represented—not in every case but in over 99 per cent of the cases—is a very important principle that is worth maintaining.

I understand the frustration of police forces when, for example, they see petty criminals represented again and again on legal aid certificates. I have had lawyers who were active supporters of the plan admit to me from time to time that sometimes there is a perception that the Legal Aid Plan is supporting disorganized crime.

**Mr. Nixon:** In organized crime they have lots of money for the good lawyers.

**Hon. Mr. McMurtry:** That's right. With the new legal aid tariff there are a number of fees which are directed towards discouraging people from needlessly prolonging trials. The new tariff hasn't been in operation long enough to see how this is working out.

It is very tempting to suggest if a person is being represented two or three or four times on a legal aid certificate, as one of the advocates said, there should be so many bites and that should be the end of it.

We have debated this issue quite extensively as to whether there should be any limit to the number of legal aid certificates that are issued to any one individual. We know that some of these criminals are abusing the plan by the mere fact that they do get these certificates—there is no question about it. But on the other hand the alternative does not really commend itself to me.

I suppose the whole process of democracy is expensive and not always very efficient and we do pay a price for maintaining our democratic institutions, but it's a price we've always been prepared to pay and should be prepared to pay.

I think in the area of legal aid it's the price we should be prepared to pay in order to maintain a very fundamental bulwark of a free society and that is the presumption of innocence. Even the most rascally, undeserving individual is entitled to that presumption of innocence in an individual case. Sometimes when certain people are given the advantage of this kind of sticks in one's craw to see that individual who has led a life of crime appearing in court once again on a legal aid certificate.

The public doesn't like this very much; I don't like it very much; but the alternative, I'm afraid, is even less acceptable to me. I think it is one of the prices we pay to maintain the proper administration of justice.

**Mr. Nixon:** I just wanted to say in addition that the statement by your principal,

the Provincial Secretary for Justice, that there were 17,000 young people unnecessarily detained certainly shocked me, and it must have shocked the Attorney General. There must have already been some private conversations between the two of them and I would think probably asinine is one of the milder words that was used on one side or the other.

I don't believe that either the Attorney General or the policy minister are going to be able to allow that simply to drift away. In my mind most of those 17,000 people would probably be represented by lawyers paid under the legal aid system.

The judges have been critical and my own judge in Brant county, Judge E. O. Fanjoy, has indicated, and I quote him again: "Some lawyers abuse legal aid. When they are paid by the hour time isn't as important."

It really means that the whole system is becoming clogged and these people are in jail as the system works through.

I mentioned a letter signed by the defence counsels in Brantford; I believe it was written by James Kent although there are a number of names appended. They end up by saying: "All court facilities are the responsibility of the provincial government. If there is any problem with the length of time that persons spend in jail pending trial Mr. Walker should be looking to his colleagues in the provincial cabinet for the solution." That is the final paragraph.

I won't quote the whole letter but I will make it available to the Attorney General. It is probably one of the best defences against the allegations or charges or statements made by the policy secretary that you could find anywhere. These fellows are working day by day in the courts.

**11:40 a.m.**

Sometimes I have been seen as being unduly critical of the legal profession. As is so often the case, the criticism is just in that there isn't time to talk about the general excellence of it. As an observer I have spent more than one day in court because I'm quite interested in it and have always been extremely impressed with the fairness and sensitivity with which the cases are dealt with, even in the long and sometimes really trying days. I would certainly feel confident in any one of the people who signed this letter.

On the other, the main spokesman in justice policy for Ontario is talking about these young people being unnecessarily in jail. We cannot let that rest. I really would have thought there would have been a rather full-

blown statement worked out among the people having to do with justice policy in the province.

**Mr. Warner:** There is no such group.

**Hon. Mr. McMurtry:** I can assure you the policy secretariat does not speak for the Ministry of the Attorney General. When we talk about spokesmen I want that absolutely clear.

**Mrs. Campbell:** That has been made clear.

**Mr. Nixon:** But of course we are going by what you call sort of an old-fashioned view of something known as the "collective responsibility of the cabinet." I'll tell you there is nothing that counterbalances the Attorney General's statement other than a withdrawal of the first statement.

**Hon. Mr. McMurtry:** Fortunately or unfortunately, I did not return to the city until late Sunday night from a brief visit to Israel in conjunction with my association with Boys' Town of Jerusalem, so I missed reading the various comments from the press reports; but certainly the press reports do concern me. Although I haven't read them all yet, I have certainly discussed it with the Minister of Correctional Services.

**Mr. Nixon:** It has just been a week, it's all right.

**Hon. Mr. McMurtry:** The two ministries have been meeting this week to attempt to resolve what may be some degree of misunderstanding on the part of some of the individuals who work within the Ministry of Correctional Services as to what this process is all about.

**Mr. Nixon:** That would exclude the minister of course?

**Mr. Warner:** Mr. Chairman, a point of order. What Mr. Nixon raises was the matter I raised on Wednesday. At that time I asked if we would receive the internal document which is referred to in those news releases and the news story by the Globe and Mail. I would think that it would be proper at this point to have that document tabled for us to take a look at.

**Hon. Mr. McMurtry:** I don't know of any internal document. As I understand it there was no formal statement given by the ministry or the minister.

**Mr. Warner:** That's what the story was based on. There was an internal report.

**Mr. Leal:** Perhaps I can help. In the meeting that we had with the officials from the Ministry of the Attorney General and Ministry of Correctional Services yesterday we put that specific question, and the Deputy Minister of Correctional Services was there:

"Might we have a look at the statement which Mr. Walker issued?"

The answer we got was there was no such statement, that this was nothing more than what Mr. Walker had been saying for at least a year and a half. We were told yesterday that the article which appeared in the press was based on two oral discussions he had had with the reporters from the media, but that they were not based—

**Mr. Renwick:** I must be out of my mind. I wrote the minister asking for a copy of his report. There is no report?

**Mr. Warner:** He claims there is no such internal report?

**Mr. Leal:** I didn't say he did; I said we were told yesterday by the deputy that no such statement was issued by the minister which prompted those articles in the paper.

**Mr. Warner:** But also that there was no such report?

**Hon. Mr. McMurtry:** I have seen a fact sheet which I will obtain. I don't have it with me now.

**Mrs. Campbell:** Yes, an internal report.

**Hon. Mr. McMurtry:** I have seen a page-and-a-half fact sheet from the Ministry of Correctional Services. Whether that relates to any report or not, I don't know. The minister said to me that certain statements of his had been taken out of context.

**Mr. Lawlor:** There wasn't any context to be taken out of.

**Hon. Mr. McMurtry:** The context at the interview which did take place.

**Mr. Lawlor:** All right

**Hon. Mr. McMurtry:** Because I think it is important to reflect—and Mr. Warner raised this in his opening statement, as I think Mrs. Campbell did too—that the word "needlessly" in jail has been—

**Mr. Ziemba:** Rotting in jail.

**Hon. Mr. McMurtry:** That may have been used too, but that is usually attributed to you—I mean not to you personally.

**Mr. Warner:** Yesterday you gave him that nice poster; today you turn on him.

**Hon. Mr. McMurtry:** But the expression "17,000 people needlessly in jail" causes me grave concern. I don't know who first used it. I know it appeared in Mr. Warren's press release; I know it appeared in the Globe and Mail editorial.

**Mr. Chairman:** I believe that when the word was used applied to Mr. Ziemba, it was used as an adjective and not as a verb.

**Mr. Renwick:** I wanted to go back because regardless of whether it was or wasn't a report is not particularly germane to the alleged comments that Mr. Nixon has pointed out. I think there is a very real problem reflected in what Mr. Nixon talks about. But I have to put in at least a word for the immense burden on the administration of justice system by white-collared organizational crimes of one kind or another.

When you think of the cost to the province of that Hamilton dredging trial—which is not yet over, so I'm not commenting on any of the substance of it—

**Mr. Leal:** The appeal is not over?

**Mr. Renwick:** The appeal is not over. Or when you think of these Sky Shops trials and a number of others, some indication of white-collar organizational crimes that, for example, the commercial branch of the RCMP have on their docket, let alone what may be on the docket of the OPP or the Metropolitan Toronto Police. The cost to the public doesn't seem to me to give the judges any right to single out the Legal Aid Plan as the cause of a lot of the problems that are involved in it.

I don't know what the problem is. I think it is something that the deans of the law schools and the law society had better address themselves to.

If you go into any of these courts and listen for a little while to the cases either at the higher level or at the provincial court level—and I'm not talking about highway traffic offences or provincial statutory offences—you get an immense sense of the introduction into our court system of United States court techniques which are relatively foreign to a number of the older members of the bar. They are very upsetting in the sense of the time which they appear to consume.

All of the deviousness of the adjournments, remands, and the whole process is a serious problem. I don't want to underestimate it but I'll be damned if I want to have it translated on to the Legal Aid Plan as the area which has created the problem.

11:50 a.m.

I think it's a much more fundamental problem among the lawyers practising at the bar than they are prepared to admit. It was as if they had all been suddenly stuck with a hatpin the way they all responded to the thought that they had anything to do with any of this.

**Mr. Nixon:** Even the lawyers in the House, I noticed.

**Mr. Renwick:** Yes, they are very touchy at times about that kind of attack on them. I

share rather more with Mr. Nixon than he probably thinks I do his concern about what is happening, but I had the same sense about that Hamilton harbour dredging trial. Most of those judges, if they ever practised in the equivalent of a provincial court criminal division here it's a hell of a long time ago.

I think the provincial court judges in Metropolitan Toronto who experience the unusual problems with the large number of men and women and who administer those courts work extremely hard to make the goddam system work and you don't find many of them criticizing the Legal Aid Plan while they're exposed to it all the time.

**Mr. Nixon:** I just wanted to make this point because I think Mr. Renwick speaks for everybody when he expresses concern at the cost and the time of the courts taken up by these cases of the type that he mentioned—the dredging case and so on.

The county court of Brant, thank God, hasn't had many of those to deal with. We don't have an airport and we don't have harbours and, frankly, we don't have any politicians who have been caught in corruption as yet. But it's that judge, and Judge Fanjoy certainly was a working lawyer in St. Thomas before his elevation—I can almost tell you the exact date but I won't bother—and he is obviously a working judge now.

It seems to me that if all of us, and particularly the legal profession, are so strongly in support of that Utopian access to the courts for everybody—if they can't pay we pay for them—that's the principle, as I understand it, and it's supportable; there has never been anybody voting against the money coming forward in the Legislature or anything like that—that we really are approaching that Utopian point.

But if there is access to the courts for everybody, and if they can't pay the public pays, then along with it must go, I suppose, the expansion of the facilities and the personnel so that we are not going to have comments such as, "The courts are plugged up," and so on. Neither should we have the comments that come from the lawyers in Brantford saying the solution is up to us, if there is an undue delay and people are languishing if not rotting in jail waiting for the program. We have to take the tax money and hire the people and build the courts.

**Mrs. Campbell:** You're talking to the converted.

**Mr. Nixon:** If we're converted why don't we spend some money on it?

**Mrs. Campbell:** You can't get it through Management Board of Cabinet.



**Mr. Lawlor:** You're quite wrong, there's no Utopian access to legal aid. There's a screening process there. They send the cases out to lawyers.

I've had some come to my office, and you give an opinion as to whether you consider there is a case to be taken forward. Most often you say no, that you find the case hasn't merit and will not likely be a success, and you send it back. I'm sure they don't get legal aid under those. There must be an awful lot of screening.

Second, take a look at the statistics. The increase in legal aid cases in many categories, and it's before us at the moment, is quite reduced. In almost every category there are fewer cases this year that were accepted by legal aid and put through than there were in the previous year.

**Mr. Nixon:** Why don't the courts unplug them?

**Mr. Lawlor:** Nonsense.

**Mr. Nixon:** Nonsense? The minister is the person who says there are 17,000 people languishing and it's our judge who says—what makes that nonsense?

**Mr. Chairman:** Order, please. I would like to remind the members of standing order 48(c). I have used some latitude with Mr. Nixon because he is the Liberal House leader and I realize that he is just back from a government trip and he has a lot of duties to catch up on.

**Mr. Nixon:** You certainly can't stir up this nest very much without getting that kind of an attack. What do you mean?

**Mr. Chairman:** I would like to remind the committee of 48(c) in which we allow latitude on the first vote to the critics. I assumed that Mr. Nixon had an important matter and the members of the committee allowed him to bring it forth under the first vote, but we have gone on at some length.

If you wish to go on, that's your decision, but I at least want you to understand that the committee has adopted, and has reinforced again at the beginning of these estimates, the fact that we were going to stick fairly closely to 46(c) out of respect for other members who may wish to bring their matters on a later vote.

As long as you understand what you're doing I'm willing to go along with this debate. I'm not underestimating the importance of the debate. I just want you to know what you are doing and get an agreement that you are doing it in case somebody at some later date challenges the chair that

I have allowed Mr. Nixon certain latitude which they have not been allowed.

**Mr. Nixon:** On a point of order, what is this latitude that you are talking about? My understanding is on the first vote dealing with the ministry the latitude is not extended just to the critics but to members of the committee or members of the Legislature who wish to direct questions at the minister or ministry having to do with policy and general matters.

The last thing I want is any preferment or special treatment from the committee or from the chairman. Actually some of his comments, when he was supposedly justifying this latitude, don't please me but that's another matter.

I can attend the committee whenever the matter is being discussed. I felt on a matter of policy and having to do with the minister, which I felt was important, that it would be in order. If you say it is not in order then certainly I will bide my time.

Frankly, I have had my say on it. The only way I would be involved further is probably if one of my good friends in one of the other parties indicates that the position is ridiculous, in which case I will have to make a response.

**Mr. Renwick:** Just on the point of order, not from the point of view as perceiving it as a point of order, I think that the point which Mr. Nixon has very properly brought before the committee and the Attorney General is a reflection on the Legal Aid Plan.

**Mr. Chairman:** Which is vote 1402.

**Mr. Renwick:** In other words, it has to do with the maladministration or the poor administration of the courts and that it's the problem of the Legal Aid Plan. I would really hope that Mr. Nixon could be present, and perhaps the clerk would be good enough to make a note of it, to perhaps notify Mr. Nixon when we reach the Legal Aid Plan vote. Some of the allegations, not by Mr. Nixon, but contained in the quotations which he made, have to be dealt with and dealt with very clearly. It's only proper that the people charged with the administration of the Legal Aid Plan have an opportunity to deal with it. I would ask that we deal with it in that way.

**Mr. Nixon:** I accept that.

**Mr. Chairman:** Mr. Renwick then was next on my list in dealing with that.

12 noon

**Mr. Renwick:** I just have one matter.

**Hon. Mr. McMurtry:** I wonder just before we deal with that, in view of the interest in this matter that we have been discussing, Mr. John Takach, who is our director of crown attorneys for the province, has met with members in the Ministry of Correctional Services in the last day. I think if the committee is interested he is in a position to clarify what was intended, at least, to be said by the Ministry of Correctional Services in this area. But again I am in your hands.

**Mrs. Campbell:** Mr. Chairman, I think in view of the concern that we all have about this statement as it appeared in the press, the fact that it has been raised, the fact that it was raised by Mr. Warner with the request that the report of an internal study be tabled here, it seems to me that this is the appropriate time to hear from Mr. Takach if he has got anything to add to this mess—and it is a mess.

**Mr. Nixon:** Just in this connection, I wonder if it wouldn't be possible if the Minister of Correctional Services himself might not come and assist us with this this.

**Mr. Chairman:** We will issue the invitation but of course it is at his discretion whether he wants to appear.

**Mr. Nixon:** It seems a shame not to have both these people.

**Mr. Chairman:** It may be easier to have him during his estimates.

Any further question or comments? I believe that Mrs. Campbell has a motion, and she has indicated to me that she does, related to what we were debating yesterday.

**Mr. Renwick:** I have a matter I wanted to raise. When will it be likely to come up? Will it come up today or next week?

**Mr. Chairman:** We have another hour. We wanted to deal with Mrs. Campbell's motion today.

**Mrs. Campbell:** You indicated that I could make a motion.

**Mr. Chairman:** You were next on the list related to the matter that Mr. Nixon had raised.

**Mr. Takach:** As the minister has indicated, I did attend a meeting with a number of officials from the Ministry of Correctional Services. I also have had the opportunity of speaking briefly to Mr. Walker about the matter.

Naturally the matter is of concern to us by virtue of the fact that any allegation that people spent time needlessly in custody reflects to a great extent on the crown attorneys throughout the system and whether

or not they are discharging their responsibilities.

It became clear, to me at least, after I spoke to Mr. Walker and after I spent a substantial amount of time with members of his ministry, that the word "needlessly," in the sense that Mr. Walker intended to use it, is certainly a misnomer to say the least.

I am assured by him and his officials that when he used the word "needlessly" he did not mean to say that people were in custody because they had been improperly remanded under section 457 of the code or that crowns had not addressed their minds to the issue as to whether or not a show-cause hearing was appropriate or that the justice of the peace, and subsequently the county court judge, did not appropriately discharge their functions and thereby that the accused persons in question were not in custody appropriately.

His concern or their concern appear to be twofold. First they appear to be concerned that there are a certain number of people in custody—and various figures have been discussed or mentioned; I guess the figure we have heard most is that of 17,000 within a certain period of time. But they were concerned that there are a certain number of people who at some point are in custody and who subsequently, after being disposed of, are not sentenced to a period of incarceration. That was the observation that he said he was attempting to make and that was certainly verified by his officials within the ministry.

We took the position with them, and we take the position now, I think, that the mere fact that there are a large number of people who at some point spend anywhere from one hour to two days to six months in custody before trial, and who subsequently are not given a sentence of incarceration, doesn't really say a thing. It doesn't say that those people were in custody improperly at the outset, or needlessly, by whatever definition, and perhaps I could spend a bit of time on that issue.

**Mr. Nixon:** On a point of clarification, I think he said they were in jail in some instances when even if they were convicted the crime did not carry the possibility of incarceration.

**Mr. Takach:** Like the Attorney General, I have not read all the press reports on it. I don't recall that statement in the ones I have read, but that is possible. That certainly did not come up in my discussions

with Mr. Walker or his senior officials of the ministry.

Mrs. Campbell: And we have already had in this committee in its last incarnation evidence of problems in the show-cause procedures.

Mr. Takach: In any event, as we attempted to explain to Mr. Walker and his staff—and this isn't a new thing; we have had ongoing discussions with them about the need to show cause, the need to detain people for a period—there are a number of reasons why people may appear at one point in the system and not be heard of again by the jail authorities. That was one thing they were quick to stress too, that they did not know what happened to these people after they went to court, except that they did not return. And they did not know why they didn't return.

We attempted to explain to them that the considerations at the time an individual is charged with an offence and those at the time when the accused is being sentenced are two completely different sets of considerations. For example, an individual might be detained at the outset on the primary grounds set out in section 457.7 of the Criminal Code which says that his detention is necessary to ensure his attendance at court. A great many accused are detained at the outset in order to ensure their attendance in court.

Naturally, when the charge is disposed of that consideration no longer prevails. If the individual were detained solely to ensure his attendance, then once he is before the court and sentence is being imposed upon him, be it a fine, probation, discharge, community-service order or whatever, naturally he would not receive a sentence of incarceration.

Mrs. Campbell: I referred just the other day—I don't remember what day—to problems which were raised by the people in the bail project, and the fact that even where access orders were made by a court, they still could not get access for the purpose of trying to resolve the problems of bail, for example, because a certain police officer and some of those in the old City Hall have taken the position that they are in charge of the prisoner and they really do not have to respond to that kind of an order. That, in itself, might make a difference in the numbers of people in jail needlessly.

Mr. Takach: I would hope, in any event, in spite of any attitude that might be taken by the police in that regard, that certainly counsel very shortly thereafter would be able to effect an attendance upon the accused

with whatever surety or individual he needed. Granted, there might be a delay of hours, perhaps longer—

Mrs. Campbell: It could be longer than that.

Mr. Takach: —but in any event, in the final analysis an individual in that situation would not necessarily have to be sentenced to a period of incarceration.

If the individual is properly detained, for example under the primary ground that he may not attend court, then it should not be of great concern that in the final analysis, after all is said and done, after the social agencies have had a look at the individual and after the court decides that incarceration is not appropriate, it should be of great concern that he was detained earlier when that detention was well justified.

Mrs. Campbell: The only reason I raised it is because when the issue was addressed at the bail open house, the minister was present. He said, "Are you still having the same problems?" So he may have had something of that in mind, and I wondered if you might ask him.

Mr. Takach: We did not review that specifically at the time.

12:10 p.m.

Mrs. Campbell: That might be part of the general statement, I don't know. I haven't had a chance to ask.

Mr. Takach: There are other reasons why individuals who are detained originally may not subsequently be sentenced to jail. First of all, a number of them are acquitted.

Mrs. Campbell: That's the tragedy.

Mr. Takach: That is going to account for a number of them. These individuals may have been properly detained and they may have long criminal records but, for some reason, in the ultimate analysis they are acquitted.

The third reason is that judges regularly and appropriately take into account that an accused has spent time in jail awaiting trial. There is a rule of thumb that one month of hard time while awaiting trial is worth two to three months of time in a proper correctional facility or institution. No doubt that accounts for a large number of individuals who are detained originally but, by the time their trial is disposed of and they are sentenced, they gain the benefit of some other disposition.

Mr. Chairman: Mr. Warner.

Mr. Warner: Mr. Chairman, I thought Mr. Renwick was ahead of me on the list.



**Mr. Chairman:** He isn't—but Mr. Renwick and then Mr. Epp.

**Mr. Renwick:** Mr. Chairman, I think my question is addressed to the chairman and to the Attorney General. We are fortunate that it would not inconvenience too many people because Mr. Walker is the Provincial Secretary for Justice as well as Minister of Correctional Services, and the Attorney General is also the Solicitor General. It would appear to me that, without our dealing with this matter in an open-ended way and guessing what it's all about, the only way would be to request Mr. Walker to attend the next meeting of this committee when it's dealing with estimates, to see if we can resolve: (a) what prompted the kinds of information that were involved in the statement that got such prominence and frightened a lot of people; and (b) to decide, regardless of the basis of it, whether there appears to be a real problem.

I know it is an unusual procedure, but it is a situation which concerns the offices of the Attorney General, the Solicitor General and, obviously, the Minister of Correctional Services. If something further should be done, he presumably would be interested in knowing about it in his overriding role as Provincial Secretary for Justice. I would like to make that suggestion. I am not suggesting some order be issued. Would you consider that, Mr. Chairman?

**Mr. Chairman:** I am sure that if I ask the clerk to invite him as a member of the Legislature, he would be happy to join our committee the next time we meet.

**Mr. Warner:** Just to be clear, that is next Friday, is it not? We are not sitting Wednesday.

**Mr. Chairman:** That is correct. It will be next Friday for the estimates on this matter.

**Mr. Warner:** If that indication could be dispatched today, then he would have an opportunity to adjust his schedule.

**Mr. Chairman:** I will have the clerk call his office and we will have a following letter later this afternoon.

**Mrs. Campbell,** do you wish to say something on this matter?

**Mrs. Campbell:** I was just wondering when I could move my motion. I know Mr. Epp has a point, a matter of concern, which really does fall in this general vote. I don't want to pre-empt him, but I would like to know when I could move my motion.

**Mr. Chairman:** We will sit until one o'clock. I am sure Mr. Epp is not going to occupy 45 minutes.

**Mrs. Campbell:** No, he's not.

**Mr. Epp:** Mr. Chairman, the case I want to draw to the attention of the Attorney General has to do with Douglas Palmer. It's a case he's very familiar with. It also has to do with the statute of limitations. The Attorney General will recall that we have had an exchange of correspondence on this matter. I also note that you indicated in a press release dated April 16, 1980, that you will be introducing the Limitations Act sometime this year.

To refresh your memory, the Douglas Palmer case has to do with an accident that occurred on February 8, 1973 in Frontenac county, at which time he was driving a vehicle owned by an Eric Palmer. It was in a collision with a snow plough. As a result of that accident, he became a paraplegic. The province then set about trying to claim \$236.80 from him despite the fact he was a paraplegic, a claim which was filed about 11 months after the accident. As a result of that claim against him for \$236.80, Mr. Palmer filed a counter-claim for \$1.2 million.

The point I want to raise is that Mr. Palmer only had a six-month limitation period, but the province conveniently had a 12-month limitation period. Mr. Justice D. G. Blair, in commenting on this, said: "The existence of a privileged limitation period for public authorities creates statutory injustice. The result, in this case, gives greater urgency to legislative action to remove the injustices created by the present law."

He also said: "I strongly urge the government to give serious consideration to recommendations of the Ontario Law Reform Commission which are now 10 years old. I do not see any justification for maintaining two substantially different limitation periods, especially when viewed in the context of this sort of situation."

When the law puts the crown in a privileged position over handicapped people such as Mr. Palmer, it would seem to me the ministry would go out of its way to try to correct a situation of this nature yet here we see a situation dragging on for 10 years. It still has not been corrected in cases that may have developed since that time. Nothing has been done to correct this situation and in some way recompense Mr. Palmer for the tragedy which caused him to become a paraplegic.

I would like some comment from the Attorney General on this.

**Hon. Mr. McMurtry:** As I indicated a moment ago, the new Limitations Act will be introduced this spring and will rectify the situation of different limitation periods. The

limitation now is two years for accidents under the Highway Traffic Act. It was that limitation that applied when some claims adjuster with the government issued the claim of \$236.80.

By way of editorial comment, I am sure the individual who commenced the claim as a routine collection matter was not aware of the tragic circumstances of Mr. Palmer.

Be that as it may, the proposed limitation period as far as public authorities are concerned will be the same as under the Highway Traffic Act, namely, two years.

**Mr. Epp:** If, in this case, the ministry has put a claim of \$236.80 after 11 months, don't you think Mr. Palmer should have the right to a counter-claim through his solicitors? Would you not be interested in bringing special legislation before the House to correct that situation? You can talk of a law all you like, you are concerned with a human being. The government is trying to collect \$236.80 from him and he probably doesn't have much money. Yet when he puts a counter-claim, it is judged not legal.

12:20 p.m.

**Hon. Mr. McMurtry:** What you are suggesting is that legislation be made retroactive. What was the date of the accident?

**Mr. Epp:** February 8, 1973.

**Hon. Mr. McMurtry:** To carry retroactive legislation back to that date would have some problems. We should all be sympathetic about the tragic circumstances of Mr. Palmer, but I just can't speculate whether it would be appropriate at this point for the government to pass retroactive legislation back to 1973.

I understand the point you are making. I am indicating to you what we have in mind for the Limitations Act.

**Mrs. Campbell:** Mr. Chairman, it is a little unfair to leave the impression that someone in the early stages treated it as just a routine matter. My understanding is that the government lost in the first court and then undertook an appeal of this case. There is nothing legally wrong with that, but it seems to me that anyone with any concern would not have gone to that extent. Is that not correct—

**Mr. Epp:** That is correct, Mrs. Campbell.

**Mrs. Campbell:** —that there was a hearing and the trial judge in the first instance allowed the counter-claim to proceed—

**Mr. Warner:** Then the crown appealed that decision.

**Mrs. Campbell:** —and the crown appealed that decision? It was a deliberate thing. It

was not a matter of somebody in a routine manner—

**Mr. Warner:** Why would the crown have appealed the decision?

**Mrs. Campbell:** I suppose to protect the limitation periods as they existed.

**Mr. Warner:** Is there an answer for that?

**Hon. Mr. McMurtry:** I assume that was the responsibility of the crown law officer or whoever was involved in the matter. There is an expression in law about cases. How does it go?

**Mr. Leal:** Hard cases make bad law.

**Hon. Mr. McMurtry:** Hard cases make bad law. If the court's ruling in view of the law officers of the crown is bad law which applies to all the citizens of Ontario, they have a responsibility to resolve that.

**Mr. Warner:** It appears a bit insensitive, that's all. I understand what you're saying.

**Hon. Mr. McMurtry:** I appreciate it appears insensitive. I am just as concerned as anyone about the perception of what occurred. I do not like it one bit.

**Mr. Epp:** Wouldn't the Attorney General, with all the legal help he has in his ministry, try to find some kind of justice for this person? Even Mr. Justice Blair indicated there was injustice here. What would be wrong with using all the assistance—

**Hon. Mr. McMurtry:** I do not think that is what Mr. Justice Blair said. He did not like the existing state of the law. He did not say there was an injustice, as I recall the judgement. In any event, I have not read it for some time. I will review the matter.

**Mrs. Campbell:** There's a difference between courts of law and courts of justice.

**Mr. Leal:** And limitations are in the courts of law.

**Mrs. Campbell:** Exactly. But that does not mean there is not an injustice.

**Mr. Chairman:** Further question, Mr. Epp?

**Mr. Epp:** I think I have received from the Attorney General a commitment that he will review this case in the hope of trying—and I am not trying to put words in his mouth—to resolve it somewhat favourably for Mr. Palmer.

**Hon. Mr. McMurtry:** I can make no such commitment.

**Mrs. Campbell:** At least we might not pursue actively the collection of \$236.80.

**Hon. Mr. McMurtry:** I understand your position and your concern. I have some sympathy for the predicament of Mr. Palmer. You have indicated to me what you want me

to do. We will take the whole matter under advisement. I cannot say any more than that.

**Mrs. Campbell:** Mr. Chairman, yesterday I had requested that—and not to detract from the estimates time—a week from Wednesday we seek the opportunity to hear from three lawyers who wanted to indicate their problems.

I suppose I was thinking in terms of the ramifications of that kind of proposal, but I'm left with this: in my opening statements I have made certain statements with reference to the police, the JPs, the crown and some of the judges. The Attorney General has refuted these statements but with the request that if there are cases that they be brought to his attention. That leaves the record of Hansard in a somewhat difficult position in so far as the rest of the members of the Legislature would be concerned.

Mr. Campbell was concerned about the sub judge rule. I would like to say I have had requests to broaden that resolution to social workers. I have refused to do so on the basis that I felt that lawyers would have some knowledge of sub judge rules and if they can bring forward the evidence that they have brought to my attention they ought to be able to do so in a public meeting where Hansard would be available to record their comments.

**Mr. Chairman:** Mrs. Campbell moves that this committee asks leave to sit a week from Wednesday afternoon to hear the evidence of those lawyers who have expressed concerns in all of these areas in handling family law matters.

**Mrs. Campbell:** I think we should hear them particularly as they are concerned with wife beating and battering but not exclusively with those sorts of cases. Then we could examine the roles of the police, the justices of the peace, and of the crown and in effect, what has happened to change the opinions of some of the judges as to whether or not they can make these orders. All this would be with a view to trying to prevail upon the Attorney General, if the evidence holds, to amend the Family Law Reform Act in similar terms to section 44(3) or whatever it is in the children's legislation so that the matter will be clarified for the courts and for the justice system.

**Mr. Lawlor:** To say the least, it bothers me deeply. You say that the members of the Legislature wouldn't have continuity of information in this particular and it should be on the record, in effect. That doesn't impress me unduly. There are many means by which you can keep the members well-informed.

What does bother me, Mrs. Campbell, is that I can think of any number of instances in which, if a departure from our procedures in this way were followed through—Let's take the example of court reporters, which we had as a major matter a couple of years ago. Let's say they wanted to appear before us and set forth their grievances et cetera. Suppose any number of the public in a particular jurisdiction had grievances against the crown attorney of the county in a case. Are we to listen? Are we to act as some kind of body in this regard for purposes of clarification?

12:30 p.m.

There are means and methods of procedures which will, I'm sure, gratify the lawyers in question: for example, what we mentioned yesterday, namely attending upon the Attorney General. I'm sure the Attorney General would permit members of the opposition to be present.

**Hon. Mr. McMurtry:** I thought we had agreed to that.

**Mr. Lawlor:** You have already agreed to that.

**Mrs. Campbell:** In the committee there was that agreement but in thinking it through afterwards, remember this, it is an unusual procedure when the Attorney General keeps inviting us to submit cases. I would say that once he has invited me to submit a case to him I ought to be entitled to submit it in the best evidence, which is direct evidence, and not by my relating cases to him which have been related to me.

I am responding to a specific invitation—I would say a challenge—of the Attorney General to produce this evidence. I think this is the best evidence that I can produce, with respect, if this is a justice committee.

**Hon. Mr. McMurtry:** I would be very reluctant to participate in such process. I think then you would be bound to invite the lawyers on the other side of the particular cases who may have a different interest. Being a public forum—and I don't know where it would end—then this committee might end up sitting for days on end—and for what apparent purpose? I would have great difficulty in participating in any such process at this stage.

At the very least, I think if you want to have these lawyers attend at the board room with the Ministry of the Attorney General, with all other members of the committee invited to attend if they so wish; at that time after that meeting if the members of



the committee think there is something to be gained by a public hearing of this committee with everything placed on Hansard and the public record then that determination—which gives me some concern—should at least await the earlier meeting to see what can be accomplished in the earlier meeting.

**Mrs. Campbell:** Mr. Chairman, may I ask this question of the Attorney General: If we did meet in camera and if, as a result of that meeting and the cases which are brought forward, it would appear that perhaps my perception is the correct one, would we have some commitment then from the Attorney General that he would then bring forward an amendment to clarify the matter?

**Hon. Mr. McMurtry:** Mrs. Campbell, I can't speculate until I have heard.

**Mrs. Campbell:** I'm not asking you to prejudge it. I'm just simply saying that if the position I have outlined is sustained by the evidence before us why is there such reluctance to bring in the amendment in view of the persuasive tactics referred to by the Solicitor General so far as the courts are concerned?

**Hon. Mr. McMurtry:** I don't know what you mean by these "persuasive tactics".

**Mrs. Campbell:** I don't know. You wrote the letter, I didn't. In your letter you have said that the courts have been making these orders—and I will try to find the quote again: "In the past some courts have directed the order specifically to a police force but they are being persuaded to discontinue the practice."

All I'm saying is that if you have concern in this area, why is there such reluctance—

**Hon. Mr. McMurtry:** I accept that senior judges had a concern. I didn't. Where the orders were made improperly I haven't been going around persuading any judges.

**Mrs. Campbell:** We have asked you to table the statistics of the cases where they have made the orders improperly and from that point of view you then took the position that you weren't fully aware of the cases; you would look into it to see what caused these "persuasive tactics" to be employed.

My concern is that if the Attorney General has concern about the violence issue as represented in this area why is he so reluctant to move to clarify it so that everyone will know what the situation is?

If the Judicature Act provisions are not sufficient to cover this, as some people have indicated, why don't we clarify it by an amendment to the act?

**Hon. Mr. McMurtry:** The problems I am aware of were in relation to custody and access matters. We have already indicated the proposed legislation. I have a completely open mind as to whether the Family Law Reform Act should be amended to contain a similar section.

**Mrs. Campbell:** Provided by restraining orders is a nullity at the present time, as I see it. If you don't agree with me we have to agree to disagree until we have the evidence.

**Mr. Warner:** Mrs. Campbell raises a very important and serious problem and I appreciate and understand it. I also appreciate the comments Mr. Lawlor made. It can become an open-minded thing and I know that is what Mrs. Campbell doesn't want to have happen; I understand that.

It seems to me that there are several approaches to this whole business. We could have an in-camera meeting with the people you have referred to. It would involve the members of this committee and the appropriate members of the Attorney General's staff, and himself.

We could have a meeting at which we had a verbatim reporter. We could have a meeting in one of the nice plush offices over there. Other than your own office I haven't been in any of the others. We could have a verbatim reporter so that we would have an accurate account of what happened.

I would prefer something that didn't open up the door that Mr. Lawlor talks about, but I would like to pursue the issue. Yes, there's a difference of opinion, it's obvious. In order to resolve the difference of opinion I think it would be very helpful to have whatever information is available from these lawyers that you referred to.

So I would like to pursue that avenue and perhaps Mrs. Campbell would—

**Mr. Chairman:** May I point out to you though, Mr. Warner and Mrs. Campbell, that pursuing that route as a justice committee, not as an ad hoc committee that you people can agree to, then the rule would be that we would deduct that amount of time of that meeting from your estimates.

**Mr. Warner:** Why?

**Mrs. Campbell:** Why could we not arrange to sit at a time when we are not here? The suggestion yesterday was a Friday afternoon, which is not a time at which we are sitting on estimates.

**Mr. Warner:** That's correct. On Wednesday afternoon the justice committee is permitted to sit by motion of the House.

Mrs. Campbell: That's right.

Mr. Warner: So that in no way should have an effect on—

Mr. Chairman: In order to do that I am suggesting to you, Mr. Warner, that you will need a motion asking that I request permission of the House for the additional sitting.

Mrs. Campbell: Right. That was embodied in my motion that it be a week from Wednesday afternoon.

Mr. Warner: Perhaps in the light of what we have mentioned, Mrs. Campbell would be willing to alter the motion. Obviously it would be on the Wednesday afternoon, but it could say that it either be in camera or we be in camera with a verbatim reporter or some way of having a record of what transpires during that afternoon.

Mrs. Campbell: I feel very much that I am letting down an awful lot of people. But if it is the only thing I can get I'm willing to do that. I would like to have some assurance that if the evidence bears out my position there will be some action.

12:40 p.m.

I've been through this routine with child-abuse cases when we had meetings which were in camera in the sense that they were in a boardroom; it was not a formal meeting of the committee, but the people in that case, social workers as well as others, were invited to give evidence. If you check with Mr. Martel you will find his frustration and mine that nothing came of that for a considerable period of time even though the child-abuse cases were demonstrated by first-hand evidence.

That is the concern I have. If we meet this way there's no assurance any action will take place for the next 10 years.

Mr. Chairman: Would you repeat your motion, Mrs. Campbell?

Mrs. Campbell: I have been invited to change it. I have to accept that I don't think it's going to pass in its present form. Two of your members aren't here and my members aren't here.

I want first to check with the Attorney General as to the convenience for him of a week from Wednesday afternoon. I don't want to embarrass him by setting a date he can't comply with.

Hon. Mr. McMurtry: I indicated I can't be here.

Mrs. Campbell: A week from Wednesday?

Hon. Mr. McMurtry: Not in the afternoon.

Mrs. Campbell: I'm sorry, I didn't understand that.

Hon. Mr. McMurtry: I will be here during the regular hours the committee is sitting and if the committee wants to hear anybody then I know nothing that would prevent it from doing so.

I'm not going to make any commitment at this point to participate in any proceedings that aren't part of the regular estimates, regardless of what the date is. I indicated my willingness to have this informal meeting in my office. Beyond that, I'm not going to make any commitment.

Mr. Warner: So you will be here Wednesday, but only to do estimates.

Hon. Mr. McMurtry: If you want to include this as part of the estimates process—

Mr. Warner: If you're going to be here Wednesday morning at 10 o'clock, what difference does it make whether we discuss something out of here or whether we have some guests and determine to have an in-camera meeting? You're going to be here. You just told us that.

Hon. Mr. McMurtry: You know my concern about the process. I have an obligation to be here for any regular meeting when estimates are being considered. If the committee wants to invite guests to appear that is its right, but I am concerned about dealing with these cases in this manner. I don't think it's the appropriate way.

Mrs. Campbell: Even if it's in camera, then, we don't have a date of a Friday afternoon.

Hon. Mr. McMurtry: It's not really in camera if it becomes part of the Hansard record. That's not my understanding of in camera.

Mrs. Campbell: When I spoke about in camera I was referring to this committee meeting with you on the Friday, but I think we would have to have permission as a committee to sit. That's what I'm trying to get around. I'm trying to accommodate you, but I also am of the opinion that I would like to see some commitment in the event that the evidence indicates my concerns are appropriate. If the evidence doesn't indicate that then you can carry on letting people be beaten up all over the place without any concern.

Hon. Mr. McMurtry: You are trying to be highly argumentative. I have indicated that I have an open mind about these matters. I'm afraid I don't make commitments in advance of hearing the evidence.

**Mrs. Campbell:** I didn't ask you to make any. If the evidence bears out what I said and you have expressed your concern for violence in our society, would we then have a commitment, because it would indicate that your refutation of my statements was, perhaps, not based on all the facts?

**Hon. Mr. McMurtry:** I don't know where we're going on this matter. I find it rather confusing. I thought we had agreed yesterday to have an informal, not a formal meeting of the committee and to invite any members of the committee who wanted to attend an informal discussion. It seemed like a sane and sensible way of dealing with it.

If the committee feels after that point that it wants some more formal hearing, that decision should await that meeting. That's my position. It makes great sense to me. I think we are unnecessarily complicating the whole process.

**Mr. Chairman:** Mr. Williams and then Mr. Lawlor.

**Mr. Williams:** Mr. Chairman, I—

**Mr. Lawlor:** May I raise a point of disorder as usual?

I have a Philadelphia case of the Workmen's Compensation Board at one o'clock. Please don't pass that first vote, I have a few things to say.

**Mrs. Campbell:** I think you will find it has been withdrawn.

**Mr. Chairman:** Mr. Williams and then Mr. Ziembra.

**Mr. Williams:** Mr. Chairman, I enjoy listening to Mrs. Campbell in estimates or anywhere else. She often presents logical arguments. They are not ones that can always be agreed with, but nevertheless she is normally quite logical in the way she expresses her concerns.

For this reason I feel compelled to speak out. I find Mrs. Campbell seemingly approaching this in a rather illogical manner, from my interpretation of the motion she has put before us. The procedures she is prescribing for the committee are, to put it mildly, most unorthodox.

First, she is suggesting that this committee would sit as a committee, yet the time devoted to this matter would not be a credit against the clock as running on committee time. Yet as I understand it it clearly would be a committee sitting.

Second, the suggestion is made that the committee would sit in camera to deal with this sensitive issue which, as the minister pointed out, is contradictory to the fact that

it is at the same time being transcribed. The question of any privacy attached to it is contradictory.

**Mrs. Campbell:** It wouldn't be prescribed as part of the motion. That was a suggestion. It's not part of my motion.

**Mr. Williams:** I heard it clearly suggested in earlier comment that it would still be in Hansard. Even if that aspect was withdrawn, if the committee is at that time deemed to be formally sitting for estimates—which is the purpose of these meetings—as a member of the committee I'm not prepared for whatever reason to sit in an in-camera hearing to hear matters pertaining to the estimates of a minister for the crown.

For those two cogent reasons, and what I feel are illogical reasons being put forward by Mrs. Campbell, I feel compelled to speak out against the motion here this morning.

**Mr. Chairman:** Mr. Williams, I'm not taking sides on whether the committee should take the course of action Mrs. Campbell has suggested. For your information I would suggest that what she has proposed is not unorthodox. Other committees during estimates time have asked that certain witnesses appear because they were related to some expenditure the ministry was undertaking. I can give you several examples and you were present at some of them.

**Mr. Williams:** Mr. Chairman, you will agree that's not orthodox. I'm not saying it hasn't been done. I'm just saying it's unorthodox.

**Mr. Chairman:** Asking that it not be deducted from the estimates may be different. Even there, I can think of some instances where half the time has been taken off the estimates. It would seem to be orthodox if by that one means that it has been done before by various committees. So I think what she is asking is in order. Whether we agree with what she is asking is a decision of the committee, it is in order, has been done before and has precedent.

12:50 p.m.

**Mr. Williams:** In a friendly way I take issue with you on that. If it is subject matter that is clearly within the terms of the estimates, as Mrs. Campbell has brought it under in the first instance, I think you would be hard pressed to show to the committee that the time would not be filed against the normal number of hours allowed for the estimates of the ministry. I don't see under what circumstances a special exception would be made in this instance. I would



appreciate your developing the argument further to justify that proposal.

I'm not saying it hasn't been done. I can't see this as one of those extraordinary cases where one can justify it being done and that's why I say I think it's an orthodox approach that I can't—

**Mr. Chairman:** What Mrs. Campbell is asking for is leave of the House to take this action.

**Mr. Williams:** If she gets the authority of the House to do it, yes.

**Mr. Chairman:** I suggest to you then that she has to make that argument. It is not the chair's position. I am not taking a position either way. If Mrs. Campbell can justify to the committee that leave should be asked of the House for additional time for this committee to deal with any matter, then she may do that. If she is able to persuade you and other members of the committee, and if it passes, then I take my instructions from the committee. If she fails to persuade the committee, then I take that position.

**Mr. Williams:** Again, I didn't hear the motion include that special dispensation would be asked of the House to extend the hearing times for that particular purpose. As I say, I didn't hear that's why—

**Mrs. Campbell:** I did say—

**Mr. Chairman:** Now that it is clear, Mr. Ziemba.

**Mr. Ziemba:** Mr. Chairman, this isn't a precedent. We have had other groups before us during estimates who appeared after they had talked to us on a private basis. I can think of the Quaker Committee on Jails and Justice which was invited to participate in the deliberations of the provincial offences bill and they were most helpful.

I don't know anything about this group of lawyers but I would like to hear what they have to say and then decide whether they can be helpful in this committee's deliberations.

**Mr. Chairman:** So you are suggesting an informal meeting first.

**Mr. Ziemba:** That's what Mrs. Campbell is suggesting.

**Mrs. Campbell:** It isn't in my motion but I did suggest that it would appear that—and I did not suggest the Hansard report.

**Mr. Ziemba:** Right, that's a very logical position.

**Mrs. Campbell:** I did try to get some indication, because I think it is a very important issue in our society and because of my experience with the child-abuse situation

with the then Minister of Community and Social Services (Mr. Brunelle). If you have the evidence how long does it take, before somebody takes action? I understand that, in a sense, the Attorney General is only prepared to be present on his terms.

**Hon. Mr. McMurtry:** That's not quite fair.

**Mrs. Campbell:** You said that you would be prepared to be present and that the committee could be present on a Friday afternoon, the date of which I didn't take but I have a record.

How do you issue invitations on this? Can the clerk send out information to the committee that this will be going on if we don't have anything formal on it? I don't know. If that's the best we can do for justice in this province, then it's the best we can do. But it's a sad day, if that's what I'm left with.

**Mr. Chairman:** If you are now asking for an informal meeting, you or I as members could act as co-ordinators of such meeting and I would be happy to do that if it is helpful. If it is a formal meeting of the committee, with additional time over and above estimates, then we have to ask leave of the House for such a meeting.

**Mrs. Campbell:** I think the Attorney General has indicated that as long as it is informal, he will attend. It would be imperative that he should attend.

**Hon. Mr. McMurtry:** I really think this has become a much more complicated issue than it need be.

We are all concerned about the issues you have raised. From your remarks I think you are suggesting that some people are less concerned than others. I don't think that is fair.

Be that as it may, I have said that because I am concerned about the rights of the litigants who may be on the other side of these cases. The lawyers are involved in it and I am concerned about the rights of their clients. I don't want to create the perception that this committee is engaged in a process that is not in the interests of the administration of justice.

I have no strong views one way or the other on any possible amendment to the Family Law Reform Act similar to what is being proposed under section 44 of the Children's Law Reform Act. I have an open mind on the matter. If there is evidence to indicate the administration of justice would be well served and particularly if there is evidence to suggest that violence in the household can be alleviated by such an amendment then, of course one would be interested in supporting such an amendment.

I made the suggestion that I thought as a first step in the process it would be helpful to have an informal meeting in my office with Mrs. Campbell or, as the chairman suggested, any other member of the committee informally inviting other members to attend if they desire. That would be a good start.

I am not suggesting that it would end there. It seems to me that we would then have a better idea of what is involved. I don't have sufficient information now to make any useful contribution as to what the process should be.

**Mr. Chairman:** Is that agreed?

**Mrs. Campbell:** What is the date?

**Hon. Mr. McMurtry:** Didn't you talk about May 2?

**Mrs. Campbell:** May 2 is what I understood.

**Hon. Mr. McMurtry:** Mr. Rowsome, did we not talk about Friday afternoon, May 2?

**Mr. Rowsome:** Yes, we did—

**Mrs. Campbell:** At what time?

**Mr. Rowsome:** At three o'clock.

**Mrs. Campbell:** At three o'clock. Will you at that time have whatever you do have? You did say that you were undertaking to look at the matter of what evidence was before you as to cases where judges had improperly exercised their discretion. You were going to look to see if you could find that. Would you have that available on that date?

**Hon. Mr. McMurtry:** Yes.

**Mr. Chairman:** It is agreed then that Mr. Rowsome will set up the meeting and that members of the justice committee will receive an invitation from Mr. Rowsome to that informal meeting. The clerk will supply Mr. Rowsome with a list.

The committee adjourned at 12:59 p.m.

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No. J-4

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General

**Fourth Session, 31st Parliament**  
Friday, April 25, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, APRIL 25, 1980

The committee met at 11:35 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

**Mr. Chairman:** I recognize a quorum.  
In response to our invitation, the Hon. Gordon Walker—

**Hon. Mr. McMurtry:** Mr. Chairman, before we get to that, I want to mention it has just been brought to my attention that Mr. Renwick is somewhat concerned by the suggestion of a meeting in my office next Friday afternoon. I want to indicate that I would like to hear his concerns and deal with that matter at some point before we get too far, because I am concerned.

**Mr. Chairman:** What is the committee's wish? Do you wish to deal with that matter first and then go on to our correspondence from Mr. Walker?

**Mrs. Campbell:** Mr. Chairman, I think that it would be appropriate.

**Mr. Renwick:** I was not here during the course of the discussions which led up to it, so the first I knew of it was when I received a letter which said three o'clock next Friday, a week today, in the office of your ministry on King Street. I couldn't understand the rationale, so I was asking Margaret Campbell, informally, what the purpose of the meeting was and what the rationale was for having it in camera. My comment then was unless I could satisfy myself there was some rationale for having an in-camera meeting, I was reluctant to take part. I wouldn't participate, simply on my past experience that apart from the traditional in-camera hearings with respect to the preparation of reports, the only odd occasion I've had in camera in committee I have always regretted I went through that procedure. I felt inhibited when I left as to what I could or couldn't say or how I would have to go about using any information I had. Those were my concerns.

I wasn't trying in any way to be arbitrary about it. I just didn't know what the rationale

was to satisfy me that I should be meeting in camera about matters of public business.

**Mr. McCaffrey:** Mr. Chairman, I wanted to make a comment. I wasn't able to be here at the meeting when the whole matter was discussed, and if it doesn't require much time I too would appreciate a little more background. I think I'm asking for something more than Mr. Renwick is, but if the chairman or the Attorney General could do that in a moment or two I, for one, would appreciate it.

**Hon. Mr. McMurtry:** Yes, I want to make the point, Mr. Chairman, that I hadn't regarded this meeting as a meeting of the committee, as such, or as an in-camera meeting of the committee.

Mrs. Campbell had indicated that certain lawyers had some significant concerns with respect to the role of the police in assisting or not assisting with respect to certain orders of the court. There had been some suggestion that the lawyers be invited to appear before this committee—an open session—and deal with their concerns. I had a little difficulty with this, simply on the basis that we may well be talking about ongoing litigation and I was concerned about the precedent this committee might be setting and endorsing by the participation of the Attorney General, in inviting lawyers to appear before the committee to talk about problems related to ongoing issues in the court.

I was concerned about not inviting lawyers on the other side of the litigation to be here at the same time. So basically that is the reason I suggested an informal meeting, inviting any members of the committee who want to attend to hear the lawyers' concerns. Of course it is not unusual for me to hear lawyers' concerns in my office on different aspects dealing with the administration of justice. I thought it might be helpful if the committee members could be present, then we would be in a position to determine whether something useful would be accomplished by inviting these lawyers to appear formally before the committee in an open session.

I thought something could be gained by sorting it out, informally, to see whether or not we were embarking on a hazardous course—perhaps that is expressing it too strongly—in inviting lawyers here who are dealing with ongoing litigation.

11:40 a.m.

**Mr. Renwick:** I don't want to delay the matter but I, for example, would have no problem if Mrs. Campbell and the chairman met with you. Mrs. Campbell has raised the matter of concern. You made a suggestion about it—that the chairman could say in an informal way, "I would go to that meeting for the purpose of informing the committee whether, on the basis of that informal discussion with Mrs. Campbell, the Attorney General and myself, I could come back and say that in our judgement we suggest or recommend to the committee this be done about the matter." I would feel satisfied with that kind of arrangement.

I am a little worried about members of all three parties meeting privately in your office to discuss the matter and saying, "Well, if we assess it properly, maybe it should be dealt with publicly." The problem that occurs with the representatives of all parties there, whether the meeting is held here or in your office, is that one is always under an inhibition if one does not have the sense that one is hearing both sides of the matter.

If in order to outline to the chairman of the committee in your presence and in the presence of Mrs. Campbell—because she raised it—it was an attempt to sort out whether these are concerns your ministry should be pursuing independently, or whether it would be helpful to have a public hearing of some of these matters before the committee, in my judgement it would be much better to pursue that informally.

**Hon. Mr. McMurtry:** I think it is a worthwhile suggestion.

**Mrs. Campbell:** One of the things behind my move in this case is that the Attorney General took a negative position as far as my statements in my opening remarks were concerned. He went on to ask me if I had cases to give him. I find that it is very difficult to get my things together with everything else I have to do. There are delays in my doing that.

I felt that before a justice committee the best evidence would be the lawyers themselves. I have been puzzled about the matters involving the other parties because it is a matter of family law legislation, particularly, but not exclusively, nonmolestation. Custody is part of it.

My concerns were that we were looking at an administration of justice system under the law and that we were not getting involved in the individual cases except from that perspective. When Deputy Chief Noble attended a meeting of the Canadian Bar Association, family law section, he is alleged to have said he would not obey these orders and would not acknowledge one which was directed to him.

It is this situation that bothers me. I can understand that if a judge is abusing the process in an individual case—which was the sort of innuendo I took from the Attorney General's remarks—in making these orders indiscriminately, we should be looking at it. But, coupled with the police college manual statements, it seemed to me that we should be looking at the role of the police vis-à-vis this legislation.

I would have thought in my own heart and soul that in inviting lawyers to appear, they would know and understand the sub judice rules. Perhaps I am mistaken, but I thought they would. There were social workers who wanted to come too, but I did not think that would be helpful. I felt we should try to see whether we have legislation which is unenforceable by reason of the police approach to it.

If we were getting into specific cases, I think that would be beyond our jurisdiction. I do not want to try to resolve the case in point, except as it may be an example of a problem.

I understand your position. It is my position. I hate things of this kind. The Attorney General was angry with me because I fought the open hearing. I would urge—

**Hon. Mr. McMurtry:** I was not angry at all. I am never angry with you, Mrs. Campbell.

**Mrs. Campbell:** Oh, you have been. You're on the record.

**Hon. Mr. McMurtry:** Never.

**Mrs. Campbell:** Anyway, I ask you to attend this meeting because I think your attendance would be of great importance to the deliberations of the committee at that time.

For your information, Mr. Lawlor has indicated he will be there, and that if at the end of that meeting I am dissatisfied, he will reconsider his position. It would be helpful if all of us who are concerned could be there.

At the moment, the notice suggests three lawyers are coming. The last count I had was five, which demonstrates in itself some concern of those practising in the field.

One of my problems is that meeting in camera is inhibiting under any circumstances, but because I think it is important enough—in the public good, if you like—I am prepared to abide by those inhibitions and not discuss what steps we will take from there except at the conclusion.

I do not know any other way to get these matters before this committee—and I have tried.

Here is Mr. Lawlor, whose name I have taken in vain.

**Hon. Mr. McMurtry:** Once again.

**Mrs. Campbell:** Once again? Did I do it before?

**Mr. Renwick:** I have a brief comment. I naturally appreciate what Mrs. Campbell has said. That still does not overcome my concern about it.

When we are dealing with what is basically a form of civil litigation under court auspices—if I could use that term in relation to the enforcement of money orders in cases of maintenance and support—which, I assume, is what we are speaking about—

**Mrs. Campbell:** No, we really are not. We are talking about matters basically under the family law reform legislation and the non-molestation-type orders—

11:50 a.m.

**Mr. Renwick:** Correct me if I am wrong. All I am saying is I have a funny feeling that the way in which this committee can best deal with it is either by generalized statements from particular cases or, by way of example, cases suitably disguised so there is no question of typical cases. These could be extracted in a way which could be put before the committee so we understand the problem these individual cases create without disclosing anything about the particulars of the cases, or by generalized statements of conclusions which can be formed from those cases. We can then deal with them. I still have that feeling.

I have no doubt the chairman could make an assessment along with yourself and the Attorney General as to whether this touched upon the administration of the system in relation to the use of the police for the purposes required, and whether the law takes into account the problems the police face in carrying out the orders or whatever problems you are concerned about. I would much prefer the other method.

**Mrs. Campbell:** I would ask that you not firm it up as to the Attorney General, the chairman and myself, but leave it open to Mr. Lawlor and others to attend.

**Mr. Renwick:** Oh sure, Mr. Lawlor or any other member will do as he is best advised. I'm not trying to make a cause célèbre. I'm just talking about the personal obstacles I have in dealing with it.

**Mrs. Campbell:** I know, so do I.

**Mr. Renwick:** Nor am I setting myself aside as having a different standard than others.

**Mr. Chairman:** Fine, is that agreed? Are there any further comments on that topic?

At this point I would like to deal with some correspondence I have received from the Provincial Secretary for Justice and Minister of Correctional Services (Mr. Walker) in response to the request by this committee that he appear so we might speak to him and the Attorney General at the same time. The letter, dated April 24, which only arrived this morning—

**Clerk of the Committee:** It was delivered last night.

**Mr. Chairman:** It was delivered last night, the clerk informs me. I received it this morning.

"Standing Committee on Administration of Justice, Room 416, Legislative Building, Queen's Park, Toronto.

"Gentlemen:

"I am flattered you would invite me to attend the sittings of the committee scheduled for April 25.

"At the moment you are considering the estimates of the Ministry of the Attorney General and it would in my opinion not be appropriate for me, as Provincial Secretary for Justice, or indeed Minister of Correctional Services, to appear.

"My own estimates follow the Attorney General's estimates and presumably that is only a week or so away; that should provide you ample opportunity to inquire of me the matters causing your interest.

"Having read the transcript of April 18, it appears that the area attracting your interest relates to the matter of remands—and the figures I used. Mr. Renwick and Mr. Nixon now have copies of a 1977 report and a 1978 report, as well as a 1979 computer printout. These proving the basis of my comments.

"You will recall my opening statement last April 4, 1979, page J-12, at which time I stated virtually the identical remarks at some length.

"Yours very truly, Gordon Walker, MPP, London South."

That is the correspondence I have received. Before we deal with that matter I would like to read to you a section from



Erskine May. There is nothing in Beauchesne or in the House orders that I was able to find that relates to this. I would like to relate to you this section from Erskine May so that you may consider it when deciding what action, if any, you wish to take. I'm reading from chapter 25 at page 686:

"Attendance of members, how secured:

"If the evidence of a member be desired by the House or a committee of the whole House, he is ordered to attend in his place on a certain day. But when the attendance of a member as a witness is required before a select committee the chairman sends him a written request for his attendance.

"Pursuant to the resolution of the 16th of March, 1688, 'If any member of the House refuse, upon being sent to come to give evidence or information as a witness to the committee, the committee ought to acquaint the House therewith and not summons such a member to attend the committee.'"

That is the only rule I can find in any parliamentary guide dealing with this kind of matter—if you wish to take any further action, other than wait for the minister during his estimates, I open it up for debate.

Mrs. Campbell: Mr. Chairman, if I may, I think the situation here is unusual in that there is, if one reads carefully, the statements of the Attorney General (Mr. McMurtry) and the statements of the Minister of Correctional Services or the Provincial Secretary for Justice (Mr. Walker) in whatever capacity he may have been making his remarks.

There is a dichotomy. He does indeed refer to the things he said in his own estimates. The difficulty is we are placed in a position of getting a part of the story. It would seem to me that if we could have both of the ministers present we could resolve the issue.

For instance, when we discussed it before, Mr. Takach raised the question of persons in jail who, when they came to Toronto, did not receive a sentence because the presiding judge took into consideration the time that person was in jail. From the material I have I am uncertain as to whether in fact those sorts of cases were a part of the material upon which the statement was based.

I don't like to require someone to attend. I believe there is a precedent for that for committees. In this House we are permitted to require the attendance, to require certain materials and so on. I would therefore move that this committee require Mr. Walker to attend. My difficulty is with a date, because I think we must always accommodate to

his convenience, but I move we require Mr. Walker to attend during the consideration of the estimates of the Ministry of the Attorney General as soon as possible following the receipt of our communication.

Mr. Chairman: If I may just respond to you, Mrs. Campbell, the only authority I know we have as a committee is to request a person's presence. Failing that we can request it a second time and failing that we can ask to report back to the House. I know of no ability by this committee to require the minister's presence. Only the House can do that.

Mrs. Campbell: If we must go to the House, I'm perfectly prepared to move to the House. But I would suggest that we not go a second time with a request; we move then to the House. I can only tell you that I believe that this has been done in the past where we have required the attendance of persons before our committee.

#### 12 noon

Mr. Chairman: From my understanding of the rules, I can, if the committee wished and if there were a motion so put, report back to the House. At that time, if the House wished to deal with the matter they could deal with it and they could decide what action they wanted to take.

I have no power to ask the House to take a specific action on that as the chairman of the committee. That is my understanding of the rules.

Mr. Renwick: Mr. Chairman, I do not wish to pursue the matter any further at this time for two reasons. One is there was no formal resolution of this committee asking you to write; it was on a most informal basis to ask that he come. Also it was not in his capacity to come as a witness before the committee, because that would have put one minister of the crown in the witness box before us and the other minister of the crown here in his capacity with his estimates, and we could not have handled that situation.

All that I was suggesting was that there seemed to be two entirely different perspectives; one of the minister in charge of the custodial part of the system; and the other of the minister in charge of the procedural, justice part. We appear to have unearthed some problems which, from my cursory look at the evidence before me, were nothing if not exaggerated in the way in which they were reported in the press.

I would simply like to defer the matter. I certainly do not want to suggest for one

moment that the Minister of Correctional Services, somehow or other, has been dis-  
obeying us or is in some difficulty with us—

**Mrs. Campbell:** Just a simple request.

**Mr. Renwick:**—nor do I want to participate in pursuing the matter further. We have enough problems about it.

I would like to say that immediately after the report appeared in the *Globe and Mail* I wrote to the minister, because I had assumed it was some kind of a report that I was going to get. A few days ago he very kindly sent on to me some background information related to these questions. I received it just a day or two ago.

I have had some preliminary look at the matter. My initial reaction is that an analysis and understanding of the data in here, which is less than clear to a non-numbers person like myself, could not usefully be pursued at this time.

What we are proposing to do is to try to analyse in some detail what is here to see if we can come up with some meaningful questions to ask of the Attorney General in the thought that when the minister or the provincial secretary is in front of us we can deal with it and ask the same questions and try to see where the contradictions and the differences are, then make a decision as to whether or not it is a matter of such importance that it should be pursued further.

Certainly on the basis of the preliminary assessment of the information that I received from the Minister of Correctional Services, it certainly does not support the story in the *Globe and Mail* in any way. Therefore, I think we would be perpetuating the quagmire if we were to pursue it at this time in some procedural way.

I would hope we would defer it until we have an opportunity to more carefully consider the problems—and I think some legitimate problems have been raised.

Therefore, Mr. Chairman, I would suggest we now put the matter aside and proceed with the estimates.

**Mr. Chairman:** We have a very small problem—and I am sure Mrs. Campbell will quickly resolve it. We do have a motion by Mrs. Campbell. I will read it, since it still is before the committee—

**Mrs. Campbell:** In the light of Mr. Renwick's remarks, I would like to withdraw that motion and place another one, so the record is straight.

**Mr. Chairman:** Mrs. Campbell moves that this committee request the Minister of Correctional Services and/or the Provincial Sec-

retary for Justice to attend during the estimates of the Ministry of the Attorney General.

**Mrs. Campbell:** We then would have at least a formal resolution of request. My difficulty with Mr. Renwick's position is that we did have these reports, but the newspaper account as I read it indicated some internal study referable to the six-month period in 1979 which was not covered in either of these two reports. I now see that they have a computer printout and have probably taken and tried to work through the earlier reports and bring them up to date.

My concern was when we were told through the press article that there was an internal study or report—I have forgotten the wording now—which related, as I read it, to the year 1979. I think we should understand what the problems are. If there is in the long run no dichotomy, then that is fine. But if there is, it is up to this committee in my view to try to straighten the matter out so we all understand what the problem is and what we are talking about, basically, with these "17,000 Needless in Jail."

The Attorney General would be probably just as anxious as we are to have the matter resolved, because it stands, at the moment, in a rather unfortunate light for our administration of justice—

**Hon. Mr. McMurtry:** Mr. Walker stated to me privately that he never used that term, "needlessly in jail."

**Mrs. Campbell:** In any event, I think his statement in the House was really less than clear on that subject. And the Attorney General was in the House when that statement was made.

**Mr. Chairman:** Mrs. Campbell has moved that this committee request the Minister of Correctional Services and/or the Provincial Secretary for Justice to attend during the estimates of the Ministry of the Attorney General.

On the motion: Mr. Williams, followed by Mr. Lawlor.

**Mr. Williams:** Mr. Chairman, I think all of the members of the committee are as concerned as Mrs. Campbell about the two matters she has been pursuing vigorously throughout the past two meetings. The difficulty that has confronted all members of the committee is the fact the particular issues seem, albeit important, nevertheless somewhat peripheral to the subject matter of the estimates before us.

Recognition of that fact was, I think, confirmed by reason of the fact that the last issue, which we resolved, was not to be dealt

with in committee but rather an invitation of the Attorney General to an informal meeting in his office. From that one can conclude that it was the feeling of this committee that that particular topic was not the appropriate subject matter for discussion before this committee. In other words, this was not the appropriate forum.

12:10 p.m.

By the same token, I think the issue we are discussing now seems to be more appropriately a matter for discussion as it relates to the Minister of Correctional Services, of course, bearing on the estimates of his particular ministry. That aspect of the subject which touches upon areas of responsibility and concern of our Attorney General and Solicitor General, of course, are matters that have already been addressed by the minister here at our last meeting, both by his staff and by the minister personally. So I think that aspect of the matter that required a particular point of view being expressed by his ministry was ably done at that time.

The motion we now have before us also seems to be really a repetition of what this committee agreed to do on an informal basis last meeting and which was done. The consequences of that action contained in the response from Mr. Walker and the procedure that would flow from that as to what is the appropriate thing to do under the circumstances has been brought to us by the chairman.

Mr. Renwick has properly introduced a more moderate approach to this, given all of the circumstances. It is an approach that I believe would be far more appropriate to follow and pursue than to press the matter in the manner in which Mrs. Campbell is doing.

I might say I'm somewhat distressed over the fact that albeit these are important issues, as I indicated at the outset of my remarks they appear to be somewhat peripheral to the purpose of these estimates. My concern is that so much time has been used up in dealing with these matters that we have lost two or three hours of valuable estimates time. I would hope that we could very quickly get back to the business at hand and what is more appropriately before this particular forum.

On that basis, Mr. Chairman, I would feel, as I believe Mr. Renwick is stating, that it would be inappropriate to pursue this matter further at this time in the direction which Mrs. Campbell would like to go. I would be opposed to that approach.

Mr. Lawlor: Yes, we are losing very valuable estimates time in this matter. Perhaps, I could ask the Attorney General a question. The secretariat is coming on immediately after your estimates; would you give any consideration to attending at the time?

Hon. Mr. McMurtry: I am quite prepared to give consideration to the request—as I do with respect to any request from the distinguished member for Lakeshore.

Mr. Lawlor: That's one way of resolving the issue. In this context I'm a little loath to have, in effect, one minister pitted against another. Nevertheless, as we no doubt tackle this issue directly with the minister concerned it would be very valuable and your remarks and position would be complementary, having a better grasp of the reasons of incarceration, if I may say so, than the present Minister of Correctional Services.

After all, it is the secretariat and it is a departure, I agree, but not as gross a type of departure as was being sought in this particular occasion. It is a secretariat. I would think that we might on some future occasion ask all members of the Provincial Secretariat for Justice to attend upon the secretariat hearings.

Mr. Renwick: That's probably the first time you will have ever met together.

Mrs. Campbell: No, they meet regularly, we're told.

Mr. Lawlor: In that particular context, if you are at all amenable to lending yourself to to that proposition—

Mr. Renwick: Briefly on the motion, whether there is or is not a problem or conflict between the two ministries is not a matter to be dealt with in terms of the headlines that were in the *Globe and Mail*. The matter is a matter of assessing the statistical evidence which has been produced by the ministry responsible for the bodies while they are in custody, and analysing and deciding what kind of conclusions can be drawn from that evidence properly analysed.

I'm simply saying to the committee—I would trust the committee would take my assurance, since I'm likely the only member of the committee to have spent a little bit of time looking at these particular documents—they are extremely confusing. I say this to Mrs. Campbell.

For this committee to start in to question people about confusing statistical information at this time will perpetuate what is wrong with our committees, which is we don't seem to be able to get on with our business. I'm urging that the motion not be supported.



Those of us who want to analyse the statistical information can make judgemental decisions about the conclusions which can be drawn. If we then want to question the ministers at an appropriate time, at that point we can decide whether or not it is of sufficient importance that we must take some procedural form to ensure the presence of the two ministers.

There is absolutely nothing I can see in the study, or in the newspaper report, or in the information which the minister has given me which would support the dramatic statements which have led to it. If the committees of the assembly are going to be run by the headlines in the newspapers then we might as well disband the committee and stop talking about the estimates, deal with what is currently the headline in the newspaper and have a standing committee to deal with newspaper headlines. That would probably be an appropriate way—

Interjections.

**Mr. Renwick:** We do it in question period. The media control the question period, now they are controlling this committee and I say, let's get on with the legitimate business of the committee.

**Mr. Ziembra:** Mr. Chairman, on a point of information: Are you saying then that after we digest this material the committee will have an opportunity to ask Mr. Walker to elaborate further?

**Mr. Chairman:** No, I don't think that is what—

**Mr. Renwick:** Until we know what we are about, we shouldn't be bothering other people with our problems. That's all I'm saying.

If we want to get our act together, if we want to sit down and have a study session of these statistics so we can frame the questions that we want to ask the minister or ministers, then we can do it that way. I'm only asking for us not to waste time now on matters which are incomprehensible; and I do not want us to be dictated to by that absolutely erroneous story which appeared in the *Globe* and *Mail*.

Interjections.

**Mr. Renwick:** They are entitled to their freedom but they don't control me. I have sat through the latter part of the last session. I have three areas I happen to think are matters which are of general concern—not dramatic, not traumatic, I just want to discuss them with the Attorney General and his advisers. I sat through most of the other session; I have sat here now for something

like 55 minutes and we haven't done one moment of our work on the estimates.

We ought to get our act together or as members of the committees we are going to be in total disrepute. We were in disrepute the other night in the Natural Resources committee and this committee, if anyone were to follow it, would say, "If this is the way they conduct their business they might as well go home and do their constituency work."

**Mr. Chairman:** I will read the motion once again and then I will take the vote.

**Mrs. Campbell** moved that this committee request the Minister of Correctional Services and/or Provincial Secretary for Justice to attend during the estimates of the Ministry of the Attorney General.

Motion negatived.

12:20 p.m.

**Mr. Chairman:** I'm sorry, I'm going to have to take that count again. The clerk and I have a dispute as to our numbers.

**Mrs. Campbell:** For goodness' sake, the motion lost. I'm satisfied it lost.

**Mr. Chairman:** Fine. The count then was 10 to five. I'll take the clerk's word.

**Mrs. Campbell:** Is that the time or is it the count?

On vote 1401, law officer of the crown program; item 1, Attorney General:

**Mr. Chairman:** We're resuming debate on the first vote of the Attorney General's estimates.

Who was speaking last?

**Mr. Renwick:** Unless you were starting a new list, I believe I was next on the list of speakers.

**Mr. Chairman:** Yes, you are next on the list, Mr. Renwick.

**Mr. Renwick:** May I proceed?

**Mr. Chairman:** Please proceed.

**Mr. Renwick:** Now, my problem will be to recall the three areas of immense importance I wanted to raise.

**Mr. Chairman:** I'm in your hands and in the hands of the minister as to whether there's some more appropriate place where these matters could be dealt with. It did appear to me on the first vote that the two or three matters I wanted to raise were most appropriate to be dealt with specifically on the very first vote.

I have a couple of specific instances in mind, but I'm not dealing with them in the way in which I might deal with a case that

was itself of major concern to me. I want to illustrate a question.

Could the minister give me some indication of the process you go through with the large number of matters where you must have to consider whether you would intervene on a constitutional case? I know that not only with cases originating in other jurisdictions you must receive a number of notifications, invitations to appear and to be represented, or to intervene on a number of matters. Then there must be a number of cases that are originating in our own courts here in Ontario which have a constitutional aspect on which you must receive notice and have to make a decision as to whether or not you will participate.

So that I could particularize the kind of thing which concerns me, I was concerned that Mr. Justice Grange in the High Court, in the case of *Sandy versus Sandy* last year, gave a judgement in relation to the Family Law Reform Act of the province and its application to land included in an Indian reserve and whether that fell to be adjudicated under the provisions of the Family Law Reform Act.

It was quite interesting that appearing before the court were a lawyer appearing for the applicant defendant, a lawyer appearing for the respondent plaintiff and a lawyer appearing for the Attorney General of Canada, but there was no lawyer appearing for the Attorney General of Ontario. Yet it was the Family Law Reform Act, (a) that was in question and (b) it raised this continuing difficult question of the effect of section 91, item 24, lands reserved for Indians and the constitutional questions around that.

I am not interested in getting into a discussion of the constitutional problems this case referred to, but I had the sensation in reading this that it was a very important matter. I felt that the decision would determine whether or not there was any basis on which the parties to it could have had what we would consider the benefit of the adjudication of the assets under the Family Law Reform Act in the results.

It was decided that whatever other application it may have as far as land reserved for Indians is concerned, regardless of the fact the land is in Ontario and is not owned by the federal government, they have never the less occupied the area.

It was a very arguable case. It appears the constitutional argument was put by the lawyer, Ms. Wallace, appearing for the respondent in the case. I want to ask the general question how you go about this and

how you make the decision. I would like to know the answer to the specific question of whether or not you had given any consideration to this case. If so, perhaps your procedures should be reviewed—because there are so many of these cases now—to determine whether your failure to appear in this was an oversight rather than a deliberate decision not to appear. That was one of the three matters I wanted to raise.

**Hon. Mr. McMurtry:** It's a very good question particularly when it pertains to the legislation of Ontario.

When a matter from another province reaches the Supreme Court of Canada there are certain considerations. I'm usually consulted with respect to whether we're going to intervene in the Supreme Court of Canada. I'm not necessarily consulted with every case that may appear in our own courts. An argument could perhaps be made that I should. I don't know.

In so far as *Sandy versus Sandy* is concerned—from what you say of the case and from my vague recollection—on the surface it does appear to be the type of case where we should be appearing. I have just sent somebody out to try to find out why we did not appear in that case, as it involved important provincial legislation, particularly legislation that has been recently passed by the Ontario Legislature.

One of the overall considerations is the public interest in the matter. When we are dealing with such important legislation as a Family Law Reform Act, the general public interest in having the Attorney General's ministry appear is quite obvious I would agree, on the surface at least. We are concerned about the integrity of the legislation. As I see the responsibility of the Attorney General's ministry, it has a duty on behalf of the public to see that legislation is properly interpreted by the courts in carrying out what we perceive to be the intention of the Legislature in passing the act.

When the issue, goes beyond the litigants and deals with—if I can put it in very general terms—the integrity of the act, the carrying out of the intention of the Legislature, then I see the Ministry of the Attorney General having a role to play. I will try to obtain a more specific answer as soon as I can to your question as to why we did not appear in that case.

**Mr. Renwick:** If it turns out it was an oversight, or your process doesn't pick it up in some way, I would urge that you request the Attorney General of Canada to make certain you are specifically notified if they

are going to appear in the case. I can only read between the lines as to what happened in this instance. My guess is that under the Indian Act the resident agent on the reserve would, if there was some dispute about land in his reserve or something under his jurisdiction, notify, as a matter of form, the Attorney General of Canada. He would intervene but wouldn't think to advise you—but I may be totally wrong.

12:30 p.m.

In a month or two, when you have an opportunity, I and perhaps other members of the committee would appreciate a brief memorandum, perhaps with examples you have dealt with in the last year, on the process by which you get information about cases involving constitutional matters and the ways in which you make decisions. It would be helpful to the committee and perhaps it would be helpful for your ministry internally to take a look at that process.

**Hon. Mr. McMurtry:** I agree and I will try to see if we can't have a memorandum prepared prior to the conclusion of these estimates so there may still be a little time left within the estimate process to discuss this the best we can. There is no reason why we can't. The point is an interesting and forceful one.

**Mr. Renwick:** I have a final question in relation to that case. The decision was adverse in the circumstances. I wonder, if it did require legislation at the federal level, whether you might consider, in the light of the judgement of Mr. Justice Grange, asking them to dovetail federal legislation, or whatever would be necessary, to be certain that persons living on the lands reserved for Indians under section 91(24) had the benefit of the family law reform provisions of the act, if it is possible to do it in the complicated way.

I wouldn't want citizens of the province to be left out of the benefit of that because they happen to be persons who resided on lands reserved for Indians.

**Hon. Mr. McMurtry:** Yes, we must pursue that.

**Mr. Lawlor:** From a brief glance at that legislation on Indian reserves, by and large there is no ownership of land. In odd cases they issue a certificate of possession. The title involved is not fee simple. It seems to be merely a possessory title. That may have been an influencing factor in the interrelationship of the family.

**Mr. Renwick:** From my reading of the judgement of Mr. Justice Grange, usually a

very clear judge, it appeared to be subject to some confusion. The confusion may have been the result of not having had the benefit of the contra-presentation by the Ministry of the Attorney General.

**Mr. Leal:** Mr. Renwick is clear on this but there is a difference between the Sandy type of case which essentially involved the point whether the Indian Act, in so far as it related to lands on the reserve, would have paramountcy over the provincial Family Law Reform Act.

To put it another way, in the 4B case on the Tyendinaga Indian reserve—on whether the federal Labour Relations Act applied to an industry on that reserve or whether the Ontario Labour Relations Act applied—that was merely a question of which statute applied. It was not a question of vires. The Attorney General doesn't automatically get notification where the vires is not in question. The rule provides, as I remember, that it's only when the vires of the provincial legislation is being impugned that the Attorney General automatically gets notice of the impugnement, if that's a word.

**Mr. Renwick:** I can understand that. I'm pleased the deputy intervened and made that distinction. I'm asking: Is there a series of other cases that raise constitutional issues which aren't strictly cases of vires?

**Mr. Leal:** Yes, there are.

**Mr. Renwick:** That's the kind of case that Sandy falls within.

**Mr. Leal:** It may be, as the Attorney General suggests, we ought to have another look at the rule to see that we get automatic notification when the Sandy type of case arises.

**Mr. Renwick:** Yes, I think it would be extremely helpful.

The second area I'm interested in was raised by my colleague from Scarborough-Ellesmere (Mr. Warner). It was the specific question: In the light of the John Labatt Limited light-beer case, in the light of the Dominion Stores Limited case and in the light of the—what do we lawyers call it, *lacuna*?

**Mr. Leal:** *Lacuna*.

**Mr. Renwick:** Something like that—the gap in the legislation. Is it not necessary urgently to give consideration to the protection of the public in Ontario with respect to the so-called statutory recipes for people who are buying things over the counter? There is a division in the court on these cases where Mr. Justice Estey is taking the provincial property and civil rights view and



where the chief justice is taking the other view in the other division of the court.

I know there are all sorts of legal distinctions that can be made as to whether it is because most of the beer was being brewed in Ontario. Forgetting that, I took what they were reasserting was that over-the-counter retail sales in the province between citizens of Ontario where one puts up his money and takes the product, are matters that must be regulated with respect to statutory recipes, not with respect to adulteration and that kind of question, and are matters for us.

If that is so, then the kind of statutory recipe problem which led to the federal Ministry of Consumer and Corporate Affairs dropping these 57 charges because of the particular recipes of the pork and beef mixtures does seem to raise a serious problem. I'm wondering whether, rather than await the event, you shouldn't be moving urgently with your colleague the Minister of Consumer and Commercial Relations (Mr. Drea) to put in some legislation and try to fit it in.

**Hon. Mr. McMurtry:** I agree with you. I think it is a very important problem. I understand there have been some preliminary meetings at the staff level between the two ministries. I agree, we have to make a decision pretty quickly as to what way we are going. It creates a void that gives me some great personal concern as it obviously does you.

**Mr. Renwick:** I would suggest, knowing the risks about hasty legislation where there is a constitutional issue involved and taking that into account, it does seem that even at the risk of having to redo it in the fall it would be important to get some legislation into place before we recess for the summer. Then a further study of it may require further refinement. It could always be replaced or superseded if necessary.

The other matter is more jurisprudential but no less important because it's a generalized concern on which I'm trying to focus. I'm not quite certain that my thinking is all that clear but I wanted to draw it to the minister's attention focused on two posts: one is this definition of organizational crimes that I'm going to read.

12:40 p.m.

"Illegal crimes are illegal acts of omission or commission of an individual or group of individuals in a legitimate formal organization, in accordance with the operative goals of the organization, which have a serious physical or economic impact on employees, consumers or the general public.

The distinction which is being made here is that the tendency in white-collar crime problems is to isolate an individual with the white collar as separate and distinct from the organization of which he is a part and punish him for that. The normal one is the guy who has his hand in the till, whatever that problem is.

I would be quite happy to let you have a copy of this paper, if you want it—for what it is worth; it raises questions in my mind rather than answers them. This particular proposal is that some organizations of necessity have goals and objectives which when pursued are quite legitimate, but the course of pursuing them causes harm to other people.

The other pole I want to hinge it on, without necessarily saying that that's the only kind of situation that I am concerned about, is this matter of asbestos.

By an absolute coincidence I listened this morning to the internal memorandum of the Johns-Manville company that was quoted on the Metro Morning show. It was about an internal directive in 1945 or 1948. Whenever it was, the company had taken X-rays of its employees in the plant and found that certain of them had either asbestos or incipient asbestosis. An internal memorandum, obviously for high-level circulation, was circulated indicating that it was in the best interests of the employees that they continue to work in the Johns-Manville plant and not be told, because it might affect their morale and so on and their capacity to perform and have a full working life and enjoy their work at home if they were told. So long as they were not disabled, therefore, these matters would be withheld from the employees. That was the internal policy of the Johns-Manville company.

You may well be interested in asking Metro Morning for the exact quotation illustrative of the kind of problem I am trying to raise, because there you have, I think it would be fair to say—and I am giving them the benefit of the doubt that there was no particular animus, or so on, that they wanted to cripple their workers. They were pursuing what to them were their corporate goals and they went through this rationalization process that these skilled workmen shouldn't be upset by being told that working at that plant was in the process of affecting their health.

It was a most astonishing memorandum. It was quoted and I am certain it exists in exactly that form.

What I am saying is would you, within the policy development or consideration roles of your ministry, start to look at that kind of problem to see whether, on the question of occupational health, which is so much in people's minds—and I'm sure it's not just occupational health; I'm sure the imaginative people you have in your ministry could think of other examples in other areas—the time may well have come that we should be proposing making certain kinds of actions crimes in order to enforce behaviour. This is not from the point of view of complicating the criminal law, but every now and then you are getting victims without crimes. It does seem to me in the progression of our social pattern, that a time comes when for the persons who are victims, someone has to ask, does it require the overall intervention of the state in its criminal law aspect?

Again, I am not saying it is a simple problem, but somewhere, sometime, we certainly create a lot of nonsensical offences in the course of time that I've been in the Legislature. We're always doing some omnibus clause that subjects somebody to some fantastic penalty for doing something and they're never enforced and nobody ever complains.

I think this is a very real problem. There does come a point in time when there are victims without a crime where the course of society means that people in organizations such as the large corporate organizations in one way or another have to be made aware they must take into consideration other interests which they have ignored in the past and that they are not prepared to just let it go on the sense of the normal mores of the community or the recognition of the problem and to trust in the people's good faith and judgement, but that they should create and begin to create crimes.

My generalized question is that I think your ministry could very well, unless you do already, perhaps have one or two of your imaginative people set aside taking an objective detached look at that way of an approach to the problem. They could see whether or not it does make sense for this minister to recommend to his colleague in Ottawa that perhaps consideration should be given to the—I can hardly say upgrading of these items into the criminal law, but whatever the appropriate one is that they require a criminal sanction.

Perhaps the minister would like to comment momentarily on that.

**Hon. Mr. McMurtry:** I wonder if I might ask for a little clarification. At one point a

few moments ago you said without the intervention of the criminal-law sanction. Perhaps I misheard you, because—

**Mr. Renwick:** I probably used my phrase wrongly. There comes a point in time—

**Hon. Mr. McMurtry:** There will be intervention of the state in the process.

**Mr. Renwick:** There comes a time when activity becomes such that you must say, "This is a situation where we must add the added sanction of the criminal law to ensure the standard of public behaviour."

**Hon. Mr. McMurtry:** Yes, certainly the Johns-Manville matter, from what you have said and from just a brief excerpt I heard earlier this morning from a question somebody asked me, would indicate that if a company has that information and has any reason to believe that continued exposure in that particular workplace is going to increase the health risk to the employee, then of course there may well be already a criminal sanction available. It may well be reckless and wilful disregard to the extent that it amounts to criminal negligence.

There is no question that that may not be sufficient. Certainly that memorandum that you have referred to would cause any rational citizen very, very deep concern.

What I'm saying, Mr. Renwick, is that I accept the validity of what you have said as to what we should be considering, because I am very deeply concerned as an individual, quite apart from my other public responsibilities, about that type of behaviour. At some point I guess philosophically we determine as a society that type of behaviour is important enough to be deterred that it is necessary to provide a criminal sanction.

12:50 p.m.

This, I guess, is a judgement that Parliament through the years has been called upon to make as to when the behaviour crosses the line from civil responsibility, perhaps, to criminal responsibility. Given some of the other sanctions that are provided in the code for much more trivial conduct, I have some high degree of sympathy for what you've said.

**Mr. Renwick:** What struck me and what was implicit in your remarks is an exact example of the changing mores of society. It may well have been that in 1945 that very memorandum might have been taken as not particularly odd the day it was published. It may have sounded reasonable and proper. I couldn't believe necessarily that it would, but the changing mores of society mean that

if that had been dated today, I would be very perturbed about it.

I recognize that there are all sorts of generalized heads such as criminal negligence under the code, but of course, in the code as well it has often been necessary under the generalized head to particularize some area in a sense which could be viewed as an example of the kind of specific delineation of conduct which you don't have to quite go to the general umbrella in order to approve it.

**Hon. Mr. McMurtry:** Yes. I would think that if we looked at the development of the Criminal Code even since 1945, we would find certain sanctions that have been added to the Criminal Code in relation to, say, certain business practices, whether it is secret commissions or some of the sections under section 110 of the Criminal Code, which I don't know were considered to be crimes in 1945 but may have been regarded by some as just a part of the tough, competitive, business context. Yet the federal legislatures decided in their wisdom to impose a greater degree of morality on the business community in the sense they have created some fairly harsh penalties or criminal sanctions for what might well have been regarded by many people as not worthy of the interference of a criminal law.

It seems to me that there is an analogy to be drawn between sections that have been added to the code to instil a greater degree of morality when the lack of morality was causing significant problems tantamount to—well obviously, corrupt practices are what I am talking about generally. Certainly, it seems to me that this type of memorandum might well be described, in today's context if not then, as a form of corrupt practice.

I realize the analogy is a rather tenuous one, but so far as the standard of morality is concerned—and this is what we're talking about when we consider the criminal sanctions—it seems to me that the morality or lack thereof implicit in such a memorandum, if that Metro Morning report is correct, is well worthy of consideration in that context.

**Mr. Renwick:** Certainly in the sort of interrelationship between sociology and law I suppose it's fairly trite to say that for reasons known only to God, I guess, people acting collectively, such as boards of directors or whatever it is, have to be careful.

I'm not casting aspersions on boards of directors of corporations. I'm using them as an example of people acting collectively who can often agree to accept something which is a much lower standard of morality than any one of the individuals, if faced with the

decision on an individual basis, would accept as being proper.

**Mr. Leal:** The whole is less than its parts.

**Mr. Renwick:** Yes. Something like that. It is that kind of concept which is behind this question of organizational crime in that sense, rather than the traditional white-collar crime of, "Well, let's find the rotten apple in the barrel and get him out because all of the other apples are naturally untainted in the operation."

Of course, in any form of human organization the automatic response of the organism is to find the scapegoat and get rid of him and everybody else is all right. We all know of many examples; that is the way human organizations operate instinctively. The law has a very real role to play in looking at collective decisions about matters which would not stand the test of individual judgement.

I do not know whether I have expressed it particularly clearly, but it is that kind of question where I think there is a vacuum in our law in a society which is becoming more and more dominated by large organizations of people.

Again, I am not restricting it to multinational corporations; but the more complicated our society becomes the more we have to use organizations in order to make it work. The more you have these collective forms of decision-making, which often have a disregard in them of some individual's rights out here, this creates a real problem. The time may be coming when crimes of an organizational nature have to be dealt with.

I think we have had them, very clearly. If a sociological study were being done of the decisions under the Combines Investigation Act and the punishments which were awarded under that over a period of time—let alone the lack of success of proving the cases—you might very well get the situation, "We'll fine the corporation, but we won't deal with the individuals who make the policy or the decisions for that corporation."

We are seeing it more and more in misleading advertising. You see that Loblaw's is fined \$10,000 for misleading advertising, and so on. I say to myself: "What the hell. It's deductible anyway."

**Hon. Mr. McMurtry:** It's a licence fee.

**Mr. Renwick:** "It's the cost of doing business, deductible under the tax act and so, what the hell does it matter?" But you never see the board of directors ever nailed, even if necessarily, vicariously liable for significant breaches.



**Mr. Leal:** Mr. Chairman, because I think the Attorney General has already assigned me a new task, could I ask a point of clarification of the honourable member?

He has set this in a context, not exclusively but chiefly, in the area of occupational health. Suppose, for example, that the designers of an automobile, and the board passing on the design, as a trade-off decided, "Yes, we'll go with putting the gas tank a little closer to the rear end than we are normally accustomed to doing." Would you think you would want us to have a look at that type of thing as well?

**Mr. Renwick:** Yes.

**Mr. Leal:** You would?

**Mr. Renwick:** Yes.

**Mr. Leal:** So it is cast broader then—

**Mr. Renwick:** Because there may come a point where a board is going to have to rely—I am not talking about short-cuts where some guy says, "Oh, let's smooth the metal a little bit further to make it a little less safe." I am not talking about that.

**Mr. Leal:** My point only was you did not limit our looking at it to the area of occupational health, but to take it in broader terms; in its broad sociological content.

**Mr. Renwick:** As I say, it was just by accident—one of the virtues of all of the delay in the committee is that it was not until today I could raise it. That memorandum this morning was a classic example of the very thing I wanted to raise.

**Mr. Chairman:** Mr. Ziembra has a quick supplementary which I will let him get in before we adjourn.

1 p.m.

**Mr. Ziembra:** Here we are, Mr. Chairman, 32 years later and there is really no law as far as occupational health is concerned at Johns-Manville. You may not be aware of this, Mr. Attorney General, but the Minister of Labour (Mr. Elgie), while he passed the occupational health and safety bill last fall, has not come up with the second part of that bill. That is the list of hazardous toxic substances and exposure times that would accompany the bill.

If you wanted to prosecute today—say, you found dangerous levels of asbestos in Johns-Manville—you would not be able to, because there are only guidelines. When

they talk about these upward limits of two fibres per cc, they are only guidelines.

Could I urge you to prevail upon the Minister of Labour to get moving on the regulations he has promised and which are long overdue, so you can take action in cases like this? We are no further ahead today than we were in 1948, really.

The second point I would like to ask is do we have a commitment from you that you will check with your federal counterpart to bring in, under the Criminal Code, criminal negligence concerning occupational health? Is that the sense I get from the answer you gave us?

**Hon. Mr. McMurtry:** No. We were obviously very interested in Mr. Renwick's remarks. We believe they are worthy of very serious consideration. The Deputy Attorney General has said he accepts the fact that he has an additional task—as we all do—to pursue the submissions made by Mr. Renwick. That is all we can do at the present time.

**Mr. Ziembra:** I am talking about penalties meted out to people convicted of serious crimes, such as imprisonment—even capital punishment, if it should ever come back. I would be in favour of that for employers who would allow to exist conditions they know are hazardous to their workers.

**Hon. Mr. McMurtry:** No. What we are simply saying is that Mr. Renwick has made some very interesting submissions; that the lack of morality implicit in a memorandum such as he has described we agree may well be worthy of criminal sanctions. And I think that Mr. Renwick was looking for that acknowledgement.

**Mr. Chairman:** Next week we will be dealing with the estimates on Wednesday, Thursday and Friday. That will be our sole business for next week.

**Mr. Renwick:** Then the following week there are no other proceedings in the House because of the constitutional debate. Is that correct?

**Mr. Chairman:** That is correct.

**Hon. Mr. McMurtry:** Does that mean we have no estimates the next week?

**Mr. Chairman:** No committees are sitting during the debate.

The committee adjourned at 1:04 p.m.

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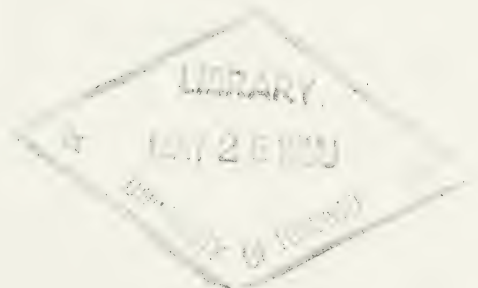


No. J-5

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**  
Wednesday, April 30, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC



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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, APRIL 30, 1980

The committee met at 10:06 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

On vote 1401, law officer of the crown, item 1, Attorney General:

**Mr. Vice-Chairman:** This committee is in order.

**Mrs. Campbell:** It's never in order.

**Mr. Vice-Chairman:** This committee is in order, Mrs. Campbell.

The chair has received a letter from the New Democratic Party House leader, advising that Mr. Lawlor will substitute for Mr. Renwick as a full member during this committee's deliberations on Wednesday, April 30. I suppose that's today.

**Mr. Cassidy:** I will substitute for one of my colleagues, if that's required, but I don't want—

**Mrs. Campbell:** You can't substitute for the same person.

**Mr. Cassidy:** No, I realize that. Who else—

**Mr. Vice-Chairman:** Mr. Cassidy will substitute for Mr. Swart. With the committee's indulgence, I am going to turn the floor over to Mr. Cassidy, who has a very pressing matter he would like to deal with.

**Mr. Cassidy:** I would appreciate that. I will be happy to leave it then to the other members of the committee who obviously are very anxious to participate.

**Mrs. Campbell:** For your information, Mr. Cassidy, and notwithstanding what the Attorney General said, while I do believe violence is violence wherever it's found, I have never advocated that the police use weapons even in domestic cases.

**Hon. Mr. McMurtry:** I couldn't; I mean I was tempted just for chuckles. I don't want to create the impression the matter is in any way one to be amused about, but the member for St. George and I have been having

a little discussion about the extent to which police should become involved in domestic matters because of the assaults. The member for St. George has felt I have been attempting to keep the police overly detached from domestic disputes. So when this unhappy event came up—

**Mr. Cassidy:** I would recommend this to you, Roy. I spent some time in London in the fall shortly after the Albert Johnson death looking specifically at the setup they had in the London police force which is designed to deal with domestic disputes and the other nontraditional matters in which police often become involved. It's very effective.

It could well be emulated in the Toronto force and the Ottawa force and in other large communities which have had similar problems and where the regular beat cop needs some kind of assistance, someone upon whom he can call if, for example, there is a domestic dispute that requires a law officer to sit and cool everybody out for a couple of hours and try to work out diversionary tactics—get them to counselling, get people to face up to their problems or whatever.

A beat cop isn't equipped to do that. But they involve a special team on the London force and the beat constable can stick around, and sometimes does, in order to learn how to do it or to participate. On the other hand, they are not barred from going out to catch a robber or do other kinds of more urgent things that come up.

**Hon. Mr. McMurtry:** I remember your visit.

**Mrs. Campbell:** What do you term more urgent, a robber? You mean property damage is more important than personal damage? I'm glad to have your philosophy.

**Mr. Cassidy:** The former of the two often governs the police. I apologize to the member for St. George. Then I would like to raise my particular question.

**Hon. Mr. McMurtry:** Michael, I remember when you visited and I remember your comments. I suggested to the Metro police force at that time they take a look at it,

following your comments. I'll see what sort of follow-up there's been.

**Mr. Cassidy:** I have two points to raise which relate to Ottawa. As the minister knows, we now have an active member of the criminal law bar on the Ottawa Police Commission. The minister has been contacted about this but has not seen any conflict. Can we now have an assurance that that practice will end?

10:10 a.m.

Quite apart from the overall need to reform police commissions, which I am afraid the government has failed to recognize, it seems to me intolerable to have a situation where one day a member of the police commission can be dealing with personnel matters and other matters to do with the force and the next day may be in court interrogating, as a counsel, police witnesses over whom that person has control.

**Hon. Mr. McMurtry:** I am of course concerned about the possibility of this and that is why I issued the directive a couple of years ago, or less than that because I haven't been Solicitor General that long—almost a year and a half ago, to my recollection. I have spoken to the police chief in Ottawa as recently as last week because he happened to be at an all-day conference I was having with the police chiefs of Ontario in Aylmer. He maintains the gentleman does not appear in court in the defence of any charges involving the Ottawa police department.

**Mr. Cassidy:** But any charges of a criminal nature which occur in Ottawa inevitably will involve officers of the Ottawa police force.

**Hon. Mr. McMurtry:** Yes, but I am advised that he does not appear for the accused in any of these cases.

If my information is correct he is not doing much criminal work, because most of the cases would involve, as you correctly point out, officers of the Ottawa police force. I happened to be in contact with the Ottawa police chief, Mr. Welsh, and the subject came up. This is the information he gave me. If your information is different, then I will pursue the matter.

**Mr. Cassidy:** I will pursue the matter. Will the minister agree to have him removed from the police commission should it transpire he is appearing in criminal cases that involve the Ottawa police?

**Hon. Mr. McMurtry:** I would be very concerned about it. Obviously the decision to appoint somebody or remove somebody is not mine. It is a decision of cabinet.

**Mrs. Campbell:** For which you are the spokesman, apparently.

**Mr. Cassidy:** Does the minister agree there would be an intolerable conflict of interest?

**Hon. Mr. McMurtry:** In my view, yes. It would be a very serious conflict of interest. That was the reason I issued the guidelines many months ago.

**Mr. Cassidy:** Given the interest in Ottawa in broadening the composition of the police commission and having appointment to the police commission from the city council, are you prepared to change the appointments on the Ottawa Police Commission so it can be more reflective of the community and more of its members can be appointed by the local council?

**Hon. Mr. McMurtry:** Well, no. I simply repeat what I have said on many occasions, that I am not prepared to recommend a change to the constitution of the police commission at this time.

**Mr. Cassidy:** Okay. I won't pursue it any further. With respect, the police are, of all local government services, the one which has the lowest proportion of contribution from the provincial level and the largest degree of provincial control. That, frankly, raises a lot of questions in my mind.

I have a separate question about the proposed courthouse on Cartier Square. This is covered in the minister's report. The planning process is now apparently under way. The efforts of the community and of the city council to participate in the planning and to ensure that there was public input into the planning have, so far, fallen on deaf ears.

I don't know if the minister is aware of the fact but the city of Ottawa happens to have a right of way along the site of Gloucester Street which traverses the proposed site of the courthouse and the United States embassy. It may be possible to design those two buildings so they fall on either side of the right of way, which has not been open for many years. But nonetheless, that's an artificial constraint on planning.

The city has proposed that it would be prepared to undertake planning of that rather difficult site which now has a major historic building, the former Ottawa Teachers' College, and will have the courthouse, the most significant provincial building ever to be built in Ottawa—if one looks back I can't think of anything comparable—and also the United States embassy. I presume the Americans will want a fairly prestigious kind of building since they are moving an embassy site they have occupied for some 50 or 60 years.



Is the government prepared to agree to the city of Ottawa's offer, bearing in mind that the city is prepared to expedite that planning process and has also committed itself to expedite the processes of approvals and so on that would follow after a consensus was reached about the siting and the way the buildings would go together and the functions involved?

**Hon. Mr. McMurtry:** First of all, I should say as a preface I don't know at this point how far the whole process has advanced. I've been part of the process to a fairly large extent but I haven't been involved recently.

We have had great difficulty over that site, as you know. We had an earlier site which because of the opposition from the local bar, we were persuaded was inconvenient to the public.

**Mr. Cassidy:** The Alta Vista monument.

**Hon. Mr. McMurtry:** This development I think was in Alta Vista. I remember visiting the site.

**Mr. Cassidy:** It would have been a disaster, you recognized that.

**Hon. Mr. McMurtry:** We were persuaded to change the site.

**Mr. Cassidy:** Hit you fellows over the head with a two by four and you start to recognize some things.

**Hon. Mr. McMurtry:** Don't be provocative. I have always been concerned about preserving the historical site, the former normal school or teachers' college. At one time I was very enthusiastic about using that building as a provincial courthouse by preserving the historical aspects of the building and renovating. We were almost about to commence when again we were persuaded that in going without a total court complex we were not being fair to the administration of justice in Ottawa.

The idea was to go in stages. First, provincial court and then we had an area of land that would have accommodated the county court and Supreme Court in another stage. That was changed because of the legitimate concerns, expressed by the people in Ottawa, about the need for a total court complex, given the unsatisfactory state of present facilities.

I realize there has been a fair degree of controversy in relation to the city's opposition, or the opposition of some of the members of the city council, to the present plan. Perhaps the Deputy Attorney General could advise you, Mr. Cassidy, as to just where that matter stands, because I know he has

been very much involved in this rather long process, and more recently than I have.

**Mr. Leal:** Mr. Chairman, we couldn't build the courthouse required to integrate the courts on the one site and also accommodate the US embassy on the north end of it without closing the right of way. I understood that had been agreed to by the city and that's why it all went together when the National Capital Commission settled with the United States government that the US embassy, which is on Wellington, would be moved to Cartier Square and leave that site on Wellington for development.

10:20 a.m.

I would be very surprised if there is any difficulty in closing that right of way at the moment. I may be entirely wrong, but I thought that was a condition of the site being utilized for the court and the embassy. I will check it out right away, but I thought we had to have that extra land to build a courthouse of the size needed.

**Mr. Cassidy:** I don't normally come to estimates because I have other fish to fry as leader of my party, but one of the reasons I have come is to talk specifically about the situation.

It is a serious situation and I think that, certainly at the political level and possibly at the level of officials, there have been substantial misjudgements about the way to proceed.

What has effectively happened is that the government has come in—this is a political decision—and said, "Ottawa should be so grateful for having the new courthouse it has been seeking for so long that it doesn't matter how we do it, they should just simply say 'ready, aye, ready.'"

The facts are the following: Over a period of two years prior to the announcement of the Premier (Mr. Davis) in November 1979 about the new courthouse, there was a small committee made up of people from the legal fraternity which was being consulted, I guess at the official level, about the proposed new courthouse.

While rumours abounded, there was absolutely no public indication that the government was preparing to act, that the government had a timetable, or what site was being considered. The Cartier Square site was one that was rumoured.

In October the land swap was finally announced. The land swap, when it was announced, was done without any concurrence or consultation with the city of Ottawa, despite the fact that Ottawa owns an important

part of the site which, as you say, has to be closed off to make the two projects possible.

Up until that time and beyond, there was also no consultation of any sort with the community.

I have been involved in this. I have been in touch with people both from the city council and in the community. One of the consequences of the heavy-handed way that both the federal and provincial governments worked was that there was a polarization of sentiment in Ottawa.

In part, some of it related to a desire to tweak the eagle's tail in relation to the Americans. It may not be unanimous but the expressed sentiment of the community has been to say there should be no embassy on that site at all. The present Liberal MP, my federal colleague from Ottawa Centre, promised as a campaign pledge there would be no embassy there, but he managed to be out of town the day that Paul Cosgrove, the federal Minister of Public Works, announced that the order in council had been passed to give the Americans that site.

The expressed sentiment of the community has also been that there should be no courthouse on that site. I say "the expressed sentiment of the community." There is, however, a strong consensus in Ottawa generally that there should be a new courthouse.

I am quite prepared to be convinced that Cartier Square is the best site for the courthouse, but I don't like the way the thing has been done behind closed doors, where the decision was reached without any evidence that other sites were considered, in particular the Canron site, which is about three blocks away, is right in the heart of Ottawa and is crying out for a building of distinction because of the frankly inadequate and shoddy development the federal government has done in the surrounding area.

I have defended the province. It is difficult, but I have defended the province in the sense of saying, "Let's not throw out the baby with the bath water." In return for that, as the member for the area, what I have asked consistently—I first asked the Premier the day after his announcement when I was back in Toronto and so was he—is that the province be prepared to open up the planning process for public consultation.

When we had a public meeting on this question on the evening of the announcement by the Premier, I urged and got people in the area to call for public consultation, public discussion about the site, about what should go into the site. I also urged and had accepted by that community meeting that it

have a deadline of three months—the middle of March—and that was accepted as well.

The reason for the deadline was that I didn't want the community to be seen as saying, "We will consider this over many years," to be repeating the mistakes I think the province made in doing all of its planning behind closed doors and taking a very long time about it. I think it was a responsible position to take, to say to the community, "You have the right to be consulted," but also to say to the community, "We need this courthouse and therefore let us carry out the consultation process over a short period of time."

If the Premier, the government and the Minister of Government Services had been prepared to accept that at that time, a lot of the dissension and polarization which has taken place in Ottawa could have been dissipated, because the ministry did not even know what it wanted in the courthouse at that time. The need study had not yet been done and, to my knowledge, is not yet completed. Architects have not been appointed, and that kind of thing.

I return to that and say although it is the end of April now, the delays are not the fault of people in the community. The delays are clearly the responsibility of the government at the official and, particularly, the political level, because you could have responded positively and taken a lot of the edge off a difficult situation.

I would urge now that this ministry, in conjunction with Government Services, go back to Ottawa and say, "We accept your offer, put a time limit on it," because there is a need for a time limit. I think Ottawa would be prepared to agree to a time limit. I would certainly press my friends in the Ottawa civic government to agree to get along with the job and do it quickly, but to ensure along the way that what goes into the courthouse is studied, that we look at whether the teachers' college should be totally excluded from the courthouse complex, and that the public have a right to look at what's going on.

I don't know what the necessary time limits are but I know this building will not actually be going out for tendering for many months if not for another year or year and a half. Construction is not likely to begin until late 1982, which is the figure I recall from the timetable I was able to get, although I am a bit shaky on the details. There is, therefore, ample time still to agree to that.

There is a letter dated April 8 which was sent by the mayor of Ottawa to Paul Cos-

grove, and I want to read it into the record because it indicates clearly there is an offer there and I would like to hear from the minister if he is prepared to agree to it. I presume something similar has been sent to Doug Wiseman but I don't happen to have a copy.

**Hon. Mr. McMurtry:** This letter is to Paul Cosgrove?

**Mr. Cassidy:** This is to Paul Cosgrove, yes.

**"Dear Mr. Minister:**

"I am ready to confirm the substance of our previous conversations concerning city's role in ensuring the orderly development of Cartier Square.

"To date there has been proposed a number of competing options for development, each falling within the jurisdiction of different levels of government and each consuming different proportions of the available land. This situation has been aggravated by the limited exchange of information and views among the interested parties, including the various federal departments and agencies, the province of Ontario, the city of Ottawa and residents of both the surrounding neighbourhoods and elsewhere in the city."

That is essentially what I have been saying. I might mention—I don't want to go into it at length—that the National Capital Commission has been known in Ottawa for top-down planning with no consultation and one of the problems was that its old habits have now been duplicated by the province.

**Mr. Leal:** They are the primary player in this.

**Mr. Cassidy:** The province is a major player in this as well.

**Mr. Leal:** I can only say that since I've been involved with this we were presented with about five options. One was to build a new federal court building adjacent to the existing Supreme Court building where that temporary building was taken down in Confederation Square. They wanted the government of Ontario to join with them in building the type of building they thought would be consistent in design with the Justice building, the Supreme Court building and the new federal court building. I, myself, attended three meetings, discussing and even looking at the architect's mockup for that.

That one came to grief chiefly because the judges, the lawyers and others in Ottawa, were very much opposed to that.

Then as another option, they offered us an existing building on Slater Street, I think, which the National Capital Commission was peddling.

**Mr. Cassidy:** The Hunter building, I believe.

10:30 a.m.

**Mr. Leal:** The Hunter building, and we were offered Alta Vista. We were going to have the normal school. As the minister has stated, we would have been perfectly happy with the normal school altered inside for provincial court (criminal division) building. As you are probably aware, Mr. Cassidy, that didn't materialize because the National Capital Commission and the Department of National Defence in Ottawa want that building for their own purposes.

**Mr. Cassidy:** I have to say to you, there would be broad support among the community for the use of the site next to the Supreme Court building. I think what happened was this government got sucked into planning practices which many people in Ottawa find distasteful. Had you brought me, as the member for the area, into your confidence, had you brought the public into your confidence, it would have been possible to develop such a strong public desire to see the teachers' college incorporated into the new courthouse complex the federal government would have had to listen.

What happened was you got—what was the word Jim Taylor used to use when he was kind of Mau-Maued by the bureaucracy in the back corridors of power? That's essentially what happened in this case.

There is a whole range of judicial and quasi-judicial functions which should form part of a courthouse complex—small claims courts, legal aid, the landlord and tenant review bureau, consumer protection agencies at the provincial and federal level—so it is genuinely a public complex where you feel you can go, even if you don't happen to be accused of a crime. While I acknowledge the difficulties of the teachers' college building for new courtroom facilities, what should have been considered was an imaginative architectural solution which would have put all those ancillary functions and the reception spaces and so on into what is now the teachers' college, and then built behind it the new buildings that would house the court facilities where you have certain technical requirements that are hard to fit into an existing building.

Let me finish reading this letter from the mayor of Ottawa:

"It is clear, therefore, that a single agency must be charged with the responsibility to pull together the various options for development and then, in consultation with the parties mentioned above, prepare a compre-



hensive plan for the future of Cartier Square. This review would need to consider the appropriateness of the various elements of development and their compatibility with the existing uses which surround the square, relating these factors to the future needs of the community and the nation's capital.

"Equally important, the review would need to prepare a site plan for the square, ensuring that the various components of development complement each other and the surrounding structures and promoting the highest standards of urban design.

"I believe that the city is in the best position to assume responsibility for the development of such a concept plan. I understand the pressures under which you are operating and thus would be prepared to recommend to council that the city retain additional professional resources in order to provide for a report within 90 days of your concurrence." They are prepared to put a time on the line. "Over that period all parties would agree to work with the consultants to review the competing demands for development, postponing any commitments which would prejudice the results of such a study. Upon its completion every effort would be made by the city to expedite the processing of its recommendations.

"It is most unusual to be presented with the occasion to develop such a prime site in the heart of this or any other Canadian city. I would hope, therefore, that we can work together to realize the full potential of this rare opportunity.

"I look forward to your early reply. Please do not hesitate to contact me further in this regard."

That letter was dated April 8. I don't know whether there has yet been a reply from Mr. Cosgrove. But the essential element is that the city is prepared to pull together the planning. It is very much aware, as the minister should be, that there are problems architecturally when there is a century-old building in strawberry gothic, when the Americans want a building which architecturally will attest to the importance of their country and the relations between Canada and the United States over many years and will have to be big enough to bring together functions that have been spread across the city for many years because of the limited size of the present chancellery, and when the province also wants a building which is functional, which has many courtrooms and which is an architectural testament to the importance of the province.

We don't want the Americans having their thing and the province having its thing and both of them overshadowing one of the most magnificent heritage buildings in Ottawa. Yet that is what is liable to occur if you don't agree to this suggestion or come up with another suggestion that will allow the city, as well as the public and the various government authorities, to be involved.

**Hon. Mr. McMurtry:** I would suggest, Mr. Cassidy, that I should bring myself more up to date on the process.

**Mr. Cassidy:** You have not been familiar with a lot of this, have you?

**Hon. Mr. McMurtry:** Certainly I haven't been familiar with some of it. I know the debate about the site of a new courthouse in Ottawa has been going on for some time.

I don't intend to be critical in any way. I don't think you had communicated your concern to me in the past about wanting to make some representation. If you had, I would obviously have been very interested in that.

**Mr. Cassidy:** I assume you would have communicated your plans to a Conservative caucus member and I'm not sure why you would refuse to do so in the case of an opposition caucus member.

**Hon. Mr. McMurtry:** I've just made that point. I make the further point that Ottawa—

**Mr. Cassidy:** I have expressed my concerns about this from the beginning, both about the need and also in arguing strongly for a downtown site over the Alta Vista site. I don't know what you want, but you—

**Hon. Mr. McMurtry:** I just make that observation in passing. The National Capital Commission has a major role to play and it has certainly been represented to me that it's virtually impossible to accomplish anything without the concurrence of the National Capital Commission. The planning process is somewhat different in Ottawa than in other communities.

I would suggest, Mr. Cassidy, that I think we have at least a dozen hours of estimates left. I don't have any of our accommodation people here. Perhaps we could come back to this later on in the estimates when I am a little better briefed as to the situation. With the concurrence of the chairman and the other members of the committee, it might be more useful to do it that way.

**Mr. Cassidy:** I think that's a constructive suggestion. In fact, I have to go to Ottawa and this evening there is a meeting of the Citizens' Advisory Committee on Cartier

Square, which is not an officially recognized body. I will seek to talk with both the citizens and the city council. I would ask the minister if I could say to the meeting tonight that you have agreed to meet with the mayor or some other senior representative of the city, perhaps with somebody from the citizens' group, along with Mr. Wiseman from this level to discuss the concerns people have and to discuss the possibility of agreeing to the proposal the mayor has made to the federal Minister of Public Works, Mr. Cosgrove.

**Hon. Mr. McMurtry:** All I can say is that I would recommend to my colleague, Mr. Wiseman, that we meet with them.

**Mr. Cassidy:** Would you be prepared to do so personally, whether or not—

**Hon. Mr. McMurtry:** Yes.

**Mr. Cassidy:** That's fine. I thank the minister very much.

**Mr. Leal:** This is not to change the site, Mr. Cassidy, but to get some input from the civic authorities on the proper utilization of the site. Is that the point?

**Mr. Cassidy:** I will be frank with you—

**Mr. Leal:** Do you want to change the site?

**Mr. Cassidy:** There are people in Ottawa, including people on the citizens' advisory committee, who feel very strongly about changing the site. At the first meeting I attended they talked about changing the site of the embassy but not the site of the courthouse. At the second meeting, which I didn't attend, I wasn't able to be there, they said the courthouse shouldn't be there either.

I would argue there should be a brief look at alternatives but I have also made the argument about the need for the courthouse. My feeling is that if the courthouse is to be there, there should still be a great deal of public involvement to ensure it is genuinely a public building and to ensure that, as much as is possible, the concerns of the various communities, including the general public—

**Hon. Mr. McMurtry:** I don't know how far the process has been advanced, as I indicated a moment ago, but certainly I'm prepared to meet.

**Mr. Cassidy:** Okay, I have indicated, in other words, that I'm not prepared to say uncritically, "No courthouse on that site," because I do think a courthouse is an important public building. If it's a building which only criminals and criminal lawyers have access to, then the claim for it to be on that site is a lot less strong than if it is a building that also brings together other judicial and quasi-judicial functions.

I see some agreement there but that's something that needs to be sold to the public—that it will be generally a public building.

10:40 a.m.

**Mr. Vice-Chairman:** Thank you, Mr. Cassidy. Thank you, Mrs. Campbell, for yielding the floor to Mr. Cassidy.

**Mrs. Campbell:** That's very interesting. I was just thinking, with all the ramifications of this building, I can recall when somebody in the Department of Public Works, as it was then known, decided it would be useful to make two courtrooms out of one existing courtroom in the family court on Jarvis Street.

I don't know where the Attorney General of the day was but somebody forget to tell him that one thing a courtroom needs is soundproofing. They went ahead and divided the two, making one courtroom into two. They didn't provide soundproofing. They went back and tried to put carpeting on the wall. If he thinks he is having problems, even something as simple as that seems to create problems.

I would like to address briefly a bit of a concern I have about the Ontario Law Reform Commission. It comes to a head as the result of the report on sale of goods. I believe that report took about seven years. Is that correct? It's a fairly lengthy study in any event.

I would like to say at the outset that I think it is a magnificent piece of work and probably will be an academic landmark for all common law jurisdictions. I am not denigrating the report, but I have a concern when we read what Professor Siegal has to say about it in an address he gave entitled, *Revising Canadian Sales Law: Some Random Reflections on the Ontario Proposals*. If I may briefly refer to that article, he sets this thing up and says, "Do we need a revised act?"

"If a group of businessmen were asked this question it is safe to assume they would either express a high degree of indifference or they would answer it negatively. We might even attain the same reaction from a group of lawyers," so what I'm saying first of all is, I'd like some kind of an understanding of the priorities.

Seven years of study of the sale of goods must have pre-empted time from other studies which might be regarded by many as of more urgency than this one. It bothers me a little because I think the Ontario Law Reform Commission suffers from the same problems as some other areas in the administration of justice, namely, lack of adequate

funding. I wonder where we go with the priorities.

As Professor Siegal points out, this was not a self-starter. The matter was referred to the commission by the Attorney General as a result of submissions made to him by the Canadian Bar Association, Ontario section, as I understand it. I wonder if when we look at the question of consumer protection we understand from the government's own studies that only four per cent of the consumers are aware of the present Consumers Protection Act.

Clearly while a law reform commission must necessarily deal with the reform of statutes, not all of society's problems can be alleviated by the mere promulgation of new laws. The problems for consumers go to the root of consumer law in that there is no equality between the contracting parties due to the concentration and growth and power of the seller, the diversification of marketing processes, the effect of mass advertising, a lack of consumer knowledge concerning products and the inability to negotiate regarding either price or the condition of sale of the product. Amending consumer protection laws is a mere drop in the bucket in the struggle to alleviate these problems.

I don't know whether my position is clear. I just wonder, with limited resources, how we arrive at the priorities for the studies which, in my opinion, throughout the existence of this commission have been of a very high standard. I want to make it clear there is no denigration of the work. It is the relationship to the ongoing difficulties.

For example, what is surfacing today—I haven't had a chance to do any research on it—is a growing concern about the power of sale in mortgages in Ontario. I wondered whether someone might have taken a look when we read the market has been rather firm in the sale of properties, of homes in particular. I wonder if anyone from any ministry has thought to investigate the records to see to what extent one might have the exercise of a power of sale and then subsequently, within a short period of time, many resales of the same property. That is an example of something which is worrying people in Ontario today.

I'm not suggesting that as a topic for the Ontario Law Reform Commission. I'm simply trying to indicate my concerns about its priorities and where we are going.

**Hon. Mr. McMurtry:** Initially, Mrs. Campbell, when I refer matters to the law reform commission they represent my priorities or concerns, knowing full well I expect a high

degree of scholarship in the report that may be forthcoming and which sometimes necessitates a longer period of time than I'd like to see—for example, class actions.

As you suggested, under the terms of the legislation, the law reform commission can initiate studies on its own initiative. The Deputy Attorney General, as you know, is the long-time chairman of the law reform commission—a very distinguished chairman.

**Mrs. Campbell:** Indeed I do.

**Hon. Mr. McMurtry:** Perhaps if I am able to give you his overview it might be quite helpful.

**Mr. Leal:** The member is quite right that that item of the sale of goods was on the agenda for the law reform commission for a long time. I should point out that it was initiated at the request of the Ontario section of the Canadian Bar Association, as she mentioned. After the commission had gone a little way into the program, the Attorney General of the day—it wasn't the present one—

10:50 a.m.

**Mrs. Campbell:** Yes, I know, seven years ago it wasn't.

**Mr. Leal:** —suggested that probably the commission would find it more helpful to the Legislature if they were to concentrate their efforts, in the initial stages, on consumer warranties and guaranties on the sale of goods.

**Mrs. Campbell:** Yes.

**Mr. Leal:** They got that and they reported in 1972.

**Mrs. Campbell:** That's right.

**Mr. Leal:** I must say that the whole study of the sale of goods arose from the fact that, as you very well recall, the personal property security legislation or the inspiration for it came from article 9 of the Uniform Commercial Code in the United States. The bar and those whom the bar served felt that perhaps something ought to be done with regard to article 2 of the Uniform Commercial Code, which led to the sale of goods study.

As I have indicated, they did do the consumer warranties report in 1972. It is also true that the report of sale of goods wasn't tabled until 1979. But in that whole period in between they have issued a fantastic number of other reports dealing with very important subjects. I would just remind myself that in February 1973 we had the administration of Ontario courts, part I; in May 1973, administration of Ontario courts, part II; in



September 1973, the report on family law, part III, dealing with children; in September 1973, the report on the Solicitors Act; in November 1973, the report on motor vehicle accident compensation; in December 1973, administration of courts, part III; in February 1974, part IV of the family law report, dealing with family property law, and in February 1974, part V, dealing with family courts. In 1974 there was the International Convention on Uniform Law of Wills, which is now part of our law. In 1975, part VI of the family law dealing with support obligations. In 1976, there was the report on the Mortmain and Charitable Uses Act, the report on landlord and tenant—that's the general part—also in 1976, and the law of evidence project report in 1976; and so on.

In that period the law governing the sale of goods was being studied concurrently with all these other major projects. My real conviction is that the more urgent, perhaps the more difficult ones, putting it that way, were not jeopardized by the fact this was going on. That's why it took so long, of course; nothing like their whole time was spent on it.

On the end result, as you are well aware, this report on the sale of goods has been submitted to the Attorney General, and, on a request made to him, it has also been referred to the uniform law commissioners for Canada so they can study it to see whether we can have a sale of goods act that will be uniform, like the Insurance Act, right across the country.

That's where we are now. I wouldn't want to suggest that, simply because it wasn't sort of in a sexy package people weren't concerned about it. I think the business community, particularly the lawyers advising them, were very much concerned that much of the business being done was being done outside the law. After all, the present Sale of Goods Act is almost the exact model of Lord Chalmers' act which, I think, was passed in 1884 and formed the basis of all of our provincial jurisdiction—

**Mrs. Campbell:** If it's good enough for your "great-great-greats," it's good enough for us.

**Mr. Leal:** They just thought it was time for another look. They've done a good job.

**Mrs. Campbell:** I am not denying that I am for another look. It's just that I wonder how much of that work which went on during that period was a self-starter.

**Mr. Leal:** I think the original reference came from the Attorney General.

**Mrs. Campbell:** In each case?

**Mr. Leal:** Yes. There was a submission in the annual budget each year. It wasn't all that large, but still—

**Mrs. Campbell:** That's the problem. And all that work—

**Mr. Leal:** I must say I have not received any recent requests from the law reform commission where additional funding hasn't been granted. At the moment they have money to do what they have been asked to do and what they themselves have initiated. I don't say they are doing all of the things they would like to do, perhaps, but I literally have had not one request for additional funding.

**Mrs. Campbell:** I appreciate that, because I am aware of the Deputy Attorney General's close affiliation with this commission. It could be that it is a perspective I have not fully understood. I am grateful for that clarification. I would not, in other words, like to see this commission operating with too little of what it needs. But it needs to set some of its own priorities.

**Mr. Leal:** The honourable member raised the question of sale under power of sale in a mortgage. That has been on their agenda for quite some time, but it has had to be postponed to let in these other projects. The latest annual report, a draft of which I have before me, indicates that a study of the law of mortgages will be reactivated this year, particularly with a view to dealing with this question of sale under the power of sale contained in mortgages.

**Mrs. Campbell:** I appreciate that because it seems, if my initial information is correct, that the matter is assuming proportions in this province which caused me to raise the issue. I would hope that somebody in this ministry or in one of the other ministries would do that legwork and really try to find out what in fact is happening on the recorded sales. My information in one case was that a sale under a power of sale—I have forgotten the figures; they were given to me—and two subsequent transfers were all recorded in the same day. It is something I think it would be useful to look at just to see what the practice is and whether there is a protection or not that needs to be built in. Our society is pretty mobile and when, by reason of high unemployment, people are moving even more than they might otherwise move, they are missing the protections under our legislation pertaining to power of sale.

**Mr. Vice-Chairman:** Have you got a supplementary, Mr. Warner, on that point?

**Mr. Warner:** Not on that topic. It is on something else.

**Mrs. Campbell:** I have finished with that. If I might just put my one directed question: What polls have you done, and may we have those polls and their results tabled before the end of the estimates? I must apprise you that the Liberal caucus has instructed me that I must, under no circumstances, pass this first vote until I have the answers to that question. So I put it to you.

**Mr. Warner:** For which year? Does it matter which year?

**Mrs. Campbell:** I certainly am of the opinion that I cannot go back forever. Let's be fair to the Attorney General and say during his term of office.

**Mr. Vice-Chairman:** Which office?

**Mrs. Campbell:** His term of office as Attorney General. I shall probably be putting the question when we get to the Solicitor General's estimates. If he wishes to act in advance of that, I would be perfectly happy. I think during his term of office as Attorney General is the fairest approach, since these are his estimates.

**Hon. Mr. McMurtry:** There has been none commissioned.

**Mrs. Campbell:** No polls?

**Hon. Mr. McMurtry:** I was just advised by the Ministry of the Attorney General that the last polls were in 1972 and 1973 and they were both published. One was in relation to off-track betting and the other was in relation to Sunday observance. There have been no polls conducted by the ministry in my tenure of office.

11 a.m.

**Mr. Warner:** Not even a popularity poll?

**Mrs. Campbell:** Are there any hidden funds in this budget for polls?

**Hon. Mr. McMurtry:** No. I didn't even ask any questions in my riding newsletters.

**Mrs. Campbell:** You certainly haven't been sending those to me as the member for Kingston and the Islands (Mr. Norton) does. I don't know why I'm on the mailing list for his newsletter. I don't know whether to feel upset or grateful.

**Mr. Warner:** I have a couple of things to raise. I am increasingly of the opinion that overall, the justice system in Ontario is in quite a mess. I don't want to be unkind in any way, but that is my impression.

We went through the dispute between the Minister of Correctional Services (Mr. Walker), in his capacity as the Provincial

Secretary for Justice, and the Attorney General. The dispute remains unresolved. Certain claims and accusations are made by—

**Mrs. Campbell:** Your party didn't feel ready to resolve it.

**Mr. Warner:** Yes, indeed. We pressed and pushed and I—

**Mrs. Campbell:** You weren't present when the vote was taken last meeting.

**Mr. Warner:** Mr. Chairman, I have—

**Mrs. Campbell:** I beg your pardon, with one notable exception.

**Mr. Warner:** I continue to press for a clear statement as to the situation. We have yet to see that. Is Mr. Walker wrong? If so, in what way? There is a gigantic discrepancy between the statements that have been made by the Attorney General and those made by Mr. Walker.

I think there are some very specific things to talk about. There are those reports Mr. Walker referred to. I read them. As we go on and if we have time I want to raise some questions about those. It may be more appropriate to raise them in Mr. Walker's estimates; I understand that.

For example, you have a letter from a lawyer which is reprinted in the Toronto Globe and Mail:

"As a lawyer in Ontario I was concerned by the attempt by Corrections Minister Gordon Walker to scapegoat lawyers as the cause for the 17,000 innocent people in jail over a six-month period last year. Not only would no defence lawyer purposely allow his client to remain in custody pending trial, but, more important, the problem has been created by the following practices which are wrongfully tolerated by the government of Ontario."

These are the specifics which I think the Attorney General has the responsibility to address to this committee and to the Legislature:

"(a) Police officers frequently lay more charges than are necessary in order to increase the pressure on an accused person to plead guilty and also make it more difficult for him to obtain bail;

"(b) There is a shortage of staff and courtroom facilities, which often means that there is a three to four-month delay between the time an accused is charged and the first date available on the court calendar for trial;

"(c) Judges and justices of the peace are not granting bail or are setting bail at amounts which are too high for many accused to pay; and

"(d) The trials are frequently delayed by adjournments requested by police officers and crown attorneys."

Those are four specific items raised by this lawyer from Hamilton, Mr. Robert B. Munroe. I am sure the Attorney General has heard complaints as I have on each one of those items.

Following up on one of them, the shortage of staff and courtroom facilities, I understand the Attorney General has a letter in his possession, dated April 25, respecting the judicial district of Durham county court, local Supreme Court and motions court. The letter reads as follows:

"I am writing you out of my concern for the public image of the courts in delays and costs to clients, resulting from breakdown in administration of justice in the province. In particular, I am writing concerning the motions court held in the above-noted court on April 11, 1980.

"On that occasion motions were scheduled for 10 a.m. I appeared on behalf of my client, prior to that time, on a contested matter. The following is a summary of the time I spent prior to the disposition of the matter:

"From 10 a.m. to 12:55 p.m., together with approximately nine other solicitors, I waited for the attendance of a judge in the motions court. From 12:55 p.m. to 1:50 p.m., His Honour Judge Kelly dealt with consent matters, adjournments and one contested matter. From 1:50 p.m. to 2:40 p.m., in the company of five solicitors I waited for another judge to become available as Judge Kelly had other commitments. From 2:40 p.m. to 4:10 p.m., His Honour Judge Lawson heard arguments on the motion in which I was involved. At the conclusion of that time there remained one more contested motion to be heard.

"I, and I think I speak for the other solicitors in attendance, have no complaint with court personnel who are most courteous and apologetic for the delay. Nor do I have any particular complaint with the members of the bench who are also most apologetic. However, it would seem to me that there is a severe deficiency in the system when a minimum of nine solicitors have to wait approximately three hours prior to even consent matters being dealt with. From discussions with other solicitors in attendance, I understand that the problem would appear to be related to an excessive work load for the judges assigned to the Whitby court.

"I trust that your ministry would be interested in investigating the situation, and I would humbly suggest the following possibilities:

"(a) A determination as to whether the number of judges in Whitby is appropriate for

the work load in the county court and the local Supreme Court; and (b) whether it would not be preferable, under the rules, that the times for motions be specific times during the day rather than having all motions for the day returnable at 10 a.m. or some other time, or that the rules be amended to provide that costs may be awarded against the crown in situations in which matters are unnecessarily delayed due to the unavailability of judges or court personnel.

"Of course, if such a situation is foreseen, the rule might well provide that 12 hours' notice by telephone would be sufficient. Furthermore, a delay that is unavoidable due to weather or illness might also be excused.

"As a result of the situation herein described, my client has been put to the unnecessary additional expense of \$157.50, ie, \$42 per hour for three hours and 45 minutes, being the period from 10 a.m. to 12:55 p.m. and the period from 1:50 p.m. to 2:40 p.m. I trust that you will give this problem, which I regretfully expect occurs elsewhere in the province, its due and careful consideration.

"I await your reply, and until then, I remain,

"Yours sincerely, A. Edward Starr, Staples and Swain."

**Hon. Mr. McMurtry:** What date was that letter? I haven't seen it yet.

**Mr. Warner:** April 25. I received it April 28. I don't know if there's a difference between the mail service to your office and mine.

There are many things that are raised here. To my mind the most critical problem that comes out of this letter and out of the letter from Mr. Munroe is that in every one of the problems cited it is the client who suffers, the person involved. The accused may be in jail because the bail is set too high, or the shortage of staff and courtroom facilities means he is facing a three- or four-month delay. The person sitting in jail is suffering needlessly.

The overcharging by police officers causes a problem for the accused person who may be guilty of one crime—that's entirely possible—but if a person has a load of charges against him it is going to be more difficult to obtain bail, I assume.

11:10 a.m.

Of course, if there are numerous adjournments, the delays caused by either the police officer or crown attorney mean again it is the accused person who is suffering in many ways. One which Mr. Starr mentions is in the pocketbook. The additional cost of \$157.50



to that client was for no service. It's not the lawyer's fault but the client gets hit with an extra bill for nothing. There was no service rendered for the \$157.50, plus the fact these talented people were tied up in court. He talks about nine solicitors in total on that day in that court.

I must say I am very uneasy about how the justice system is functioning in this province and Mr. Walker opens it up. He may be wrong; I don't know. We may never know, because obviously you and he don't want to meet in the same room with us, but someone has to explain what is going on. This just can't be left, surely.

I will draw to a conclusion because I don't want to use up a lot of time. All the other members want to get in on this—the many who have flocked to the room this morning—

**Mrs. Campbell:** At least there are three of us of the committee.

**Mr. Warner:** I wonder if the minister could go through each of those specific points I raised: the four from Mr. Munroe's letter and some detailed explanation—not this morning—of the letter Mr. Starr raised. Perhaps the minister could go through—at least in general terms and I would like some specifics as well—the four points Mr. Munroe from Hamilton raises in his letter and if at all possible, supply some answer to what Mr. Walker raises.

**Hon. Mr. McMurtry:** Thank you, Mr. Warner, Mr. Chairman.

First of all I have to take strong issue with the statement by Mr. Warner that the justice system is in a mess in this province. While we do not claim perfection, we recognize our problems and attempt to deal with them on a day-to-day basis. The truth of the matter is that the quality of administration of justice in this province is not second to any jurisdiction in the western world—

**Mr. Lawlor:** And a lot of other places.

**Hon. Mr. McMurtry:** No, it's of a very high quality indeed and that view is shared overwhelmingly by members of the profession. I mention that because Mr. Warner has relied so heavily on a letter from a gentleman who is not known to me. I assume he may be known to one or two other people, but I don't know—

**Mrs. Campbell:** Does that mean it isn't an important letter?

Interjections.

**Hon. Mr. McMurtry:** Do you want me to answer the question?

**Mr. Warner:** Yes, I do. This is fascinating.

**Hon. Mr. McMurtry:** I want to make it quite clear that the view, quite properly, of the professional bar is that despite many ongoing problems facing any justice system, we enjoy a very high quality of justice, indeed. This is a result of the dedicated involvement of the judiciary, court officials, law officers of the crown and, by and large, a highly committed profession.

Dealing with some of the matters raised in this letter with respect to—firstly, not necessarily in the order he dealt with them—the allegation of delays caused by the crown, unnecessary adjournments. We did a study recently in Ottawa which we think is fairly representative of what occurs in relation to request for adjournments. This may be of interest to the members of the committee.

In the study in March of this year—and it's broken down into the four weeks in the month—total number of adjournments: first week, 536; judge reserved judgements, six; pre-sentence reports, 41; crown requesting, four; defence, 485. Second week, 560; the crown requested 15; defence, 502. Third week, crown, six; defence, 548. Fourth week, crown, one; defence, 562.

There is another study, done in October—I might have given that first—which gives similar, almost identical statistics. The total adjournments requested by the crown were 1.1 per cent; by the defence, 88.1 per cent; crown in the October 1979 study was 1.01 per cent; the defence, 86.4 per cent; in the rest the judge reserved the decisions. These are pre-sentence reports and I assume many of these dates were sub trial dates and what not.

**Mr. Warner:** Which court is that?

**Hon. Mr. McMurtry:** This was in Ottawa.

**Mr. Warner:** What kind of court?

**Hon. Mr. McMurtry:** I'm sorry, the provincial court (criminal division).

So the statement that the crown is delaying these trials by unnecessary crown adjournments is not factual. The correspondent is badly misinformed on that particular matter.

**Mr. Warner:** That may be so, Mr. Attorney General. Could we have figures for the other courts? Could you table that at some point?

**Mrs. Campbell:** Before you go on, could I ask how you categorize the system when there is an appearance in which a date is set to set a trial date? Is that characterized as defence adjournment or a crown adjournment? That is the practice, isn't it—or was; I haven't been there recently?

**Mr. Lawlor:** I think they throw the vow to the defence.

Mrs. Campbell: That could create a distortion in the figures.

Mr. Lawlor: It could mean distortion in the figures.

Hon. Mr. McMurtry: I said many of these dates were undoubtedly to set trials. I'm not quarelling—but I can obtain further explanations.

Mrs. Campbell: That's a part of the system that bothers me a bit.

Hon. Mr. McMurtry: This was just handed to me in response to Mr. Warner's question, so we can get further clarification of this—

Mrs. Campbell: Yes, it would help.

Mr. Warner: We don't, perhaps, need them for the entire province, but at least for the Hamilton area. Could we—

Hon. Mr. McMurtry: Special studies have to be made. I have instituted a system whereby better court records are kept of court logs in relation to times of trials, adjournments and reasons for adjournments. It would require a specific study of these records on a—

Mr. Warner: You don't generally do them?

Hon. Mr. McMurtry: I will see what information we have available on a month-to-month basis and we will obtain any additional information we can for you, but I am satisfied the vast majority of adjournments are at the request of the defence counsel. I'm not suggesting the defence counsel are abusing the system. There is some abuse certainly but the suggestion that these delays were caused by crown and police adjournments is not borne out by the facts.

11:20 a.m.

On the allegation made from time to time that the police lay an unnecessary number of charges, we don't say that does not happen on occasion. It's not a major factor. We encourage police officers to review these matters with local crown attorneys before charges are laid if there is some question, as there often is, in a police officer's mind as to what the proper charge is. Occasionally unnecessary charges are laid in any human system.

The consultative process between police and crown attorneys generally in the province is very good. Defence counsel traditionally make the argument that there is an unnecessary multiplicity of charges laid. The statement is made from time to time, and yet it has never been proven as a major factor. It's a problem we are concerned about and I have encouraged our crown attorneys to make themselves even more accessible to police officers to avoid that. We don't state

that it never happens, but to suggest it's a major problem in so far as causing court delays is concerned—

Mr. Lawlor: May I object on that just for a second? This is properly taken up with the Solicitor General and I hope we will do so. My impression is that they do lay too many charges. You speak to the average criminal lawyer, this is one of the primary complaints he has these days. They throw the book and it clutters the courts. I don't know what you can do but something is going to have to be done soon. I don't think we should discuss it here, but it's a matter to bear in mind.

Hon. Mr. McMurtry: Mr. Lawlor, I indicated that we recognize this does happen on occasion. What we are trying to do is make the crown attorneys more accessible. One of the allegations is in relation to the shortage of staff and courtroom facilities.

Mr. Warner: If I could just tidy up that last point. You showed us a little study you had on the adjournments from Ottawa. Do you have a similar type of study with respect to the laying of charges? In other words, a look at the average number of charges laid, minimums, maximums, the number that are dismissed, so we can get some picture of the normal situation in Ontario and the number of charges generally laid against a person, the number subsequently dismissed or dropped—

Hon. Mr. McMurtry: Or withdrawn.

Mr. Warner: Or withdrawn—so we get some idea. Quite frankly, from my limited experience, I get the impression it is a fairly common practice of the police to pile a number of charges on a person. But we operate best when we have the facts, so if you have some study you can give us I would appreciate it.

Mr. Lawlor: I'm confused. Before these estimates are over, if they ever are or before we reach them again, the point I'm going to mention is the central one at this stage. If I may speak to you very generally, since the estimates were last fall there isn't the same kind of pressure to get to individual items and they are not going to cut down on any money. We don't even intend to reduce your salary—I don't think—so perhaps a little more time could be spent, on this whole vexing issue, raised by the Minister of Correctional Services.

Looking over the documents produced for us et cetera, just a brief comment. I would like to get on with other things this morning. It's the opening statement on the Stanley

thing: "On any given day an average of between 40 and 50 per cent of the inmate population of the ministry's jails and detention centres are there as remand prisoners," with all kinds of justifications.

I find this document awkward, terribly difficult to read. There are all kinds of non sequiturs. They start a sentence with certain statistics and end up talking about something else. It has to be straightened out and I'm sure there is a fairly good case.

What we were talking about just a moment ago, bail at page VII-2; they point out that "45 per cent of those interviewed in the Toronto jail have been granted bail at their first appearance." That's pretty good, or is it? That's the problem. We know the numerous reasons, perfectly justified, whereby bail is not so granted on the first appearance and maybe on a subsequent appearance. But the interrogation into bail would be the first step in the process.

We need further discussion because a whole host of other factors enter which can very well be obviated. A little thought and discussion with critics might bring about some valuable reforms.

At page VII-3, they give their four reasons, the causes, "The delay in coming to trial was usually the result of overcrowding in the court system."

That's where Mr. Warner was referring to some degree of mess. Maybe that's the wrong word. If it offends you, I would simply say it's a structural problem that has been in the system for a long time. Ever since you have been Attorney General, you have done a great deal to obviate it. You are opening new courtrooms all over the place; you are appointing judges left, right and centre in order to overcome it. Whether what you have done is adequate to this stage is questionable.

I will give you a commendation. You have increased your budget considerably by, I trust, a little arm twisting in the right quarters, and it's beginning to look adequate to the purposes of the administration of justice.

The second point they make is excessive work loads and then they do something niggling. It really gets under my skin. "Excessive work loads experienced by some legal aid defence lawyers." They could have left out the legal aid. Somehow or other in consultation with the Law Society of Upper Canada, a scheme will have to be worked out whereby defence lawyers do not—I thought the judges were getting damned tough for a while. They were laying down the line: "No further adjournment in this

case. We set a date, that date is peremptory"—as they call it. "You appear and if you don't we go ahead."

But when the day comes they don't go ahead because of their innate residual sense of decency or justice—and justice is decency at that stage, always. Lawyers are enormously clever people and are able to generate all kinds of excuses, including getting themselves locked up in bandages in the local emergency ward. In some cases manipulation of the system by remanded prisoners themselves is a factor, but I would like to know what weights you put on these things and how you regard them.

An independent scheduling of cases by the different levels of court is another factor. Again, that causes the remand situation because the lawyer says, "I'm engaged in a higher court than yours and you being in an inferior status must suffer the consequences." Off he goes to the Supreme Court.

**Hon. Mr. McMurtry:** We know the chief justice's directive at the beginning of last year was an attempt to alleviate that situation. It's a matter I have discussed with him in his role as the chairman of the judicial advisory council. The directives he sent out were intended to cut down on the number of adjournments and more particularly to persuade judges throughout the system to respect the court dates that had been set in the so-called lower courts. I don't like to use that term but the provincial courts and county courts, et cetera.

11:30 a.m.

While the problem undoubtedly exists, I mentioned that as an important initiative and one that received little criticism from the practising bar. Certainly I think it was an important and very laudable initiative that was taken by the chief justice of the province.

**Mr. Lawlor:** I shouldn't take it all that seriously. I think it should be looked into and it's certainly a factor but if you consider that every morning in the courts in the old City Hall or out in the West Mall—well, let's take the very numerous courts. I don't know how many there are, 18 or 20 courts at the old City Hall? And there are—

**Hon. Mr. McMurtry:** More than that, yes.

**Mr. Lawlor:** —10 adjournments per court, as there always are at the beginning of the court thing?

**Hon. Mr. McMurtry:** We are concerned about the number of adjournments. There's no question about that.



**Mr. Lawlor:** Look at the figure on that—200 adjournments right off the bat on a single day.

**Hon. Mr. McMurtry:** We are very concerned. If we can maintain this dialogue, Mr. Warner reverted to some articles that appeared in the local press, but I think unfortunately he was absent on the last day we were discussing estimates.

Mr. Renwick quite properly pointed out to the committee the danger of placing too much importance on any articles which appear in the press. He mentioned the article which appeared in the *Globe and Mail*, in particular, as not being supported by the information Mr. Walker supplied him with. Mr. Walker did not use the terms that appeared in some of these headlines, for example, "needlessly in jail." His admonition to the committee as a whole not to be overly influenced by the media in the discussion of these estimates I thought made a great deal of sense.

But the problem does exist. There are too many adjournments. One of the reasons is that we do respect, for very good reason, the right of the individual accused to counsel of his or her own choosing. Counsel do get caught in other courts. Even the most conscientious defence lawyer—conscientious from the standpoint of not wanting to inconvenience the court and not wanting to seek unnecessary adjournments—is going to find trials going on for a longer period of time than he or anyone else could anticipate. This happens on a day-to-day basis.

The nub of the problem is the principle, recognized in our courts, of the right, first of all, for an accused to be represented—which no one would quarrel with—and secondly, the right to counsel of his or her own choosing. It's a right that is very costly, in so far as the public is concerned, because of these unnecessary numbers of adjournments.

For example, when I talked to people in the United Kingdom about problems we have and shared information with respect to court administration, I found they don't have many of these problems because a court date is a court date. The case goes on. There are no adjournments—I'm sure there are from time to time but very few—simply because the structure is different.

There is a divided bar. If you are charged with a criminal offence, you retain a solicitor. The solicitor, in turn, retains counsel unless the solicitor is going to take the case himself. He can in the lower courts. I am told that if counsel is caught in another court, the case still goes on. It is the job of the solicitor to brief a barrister, often at the very last

moment. I am not advocating that system here but I am just using it as an illustration of the nature of a problem we have by recognizing this right.

Now, a judge may wish to force a case on for trial. Mr. Lawlor refers to a certain innate sense of decency and justice that may persuade him not to force a case on for trial. I don't quarrel with that description. But it is equally important that the Court of Appeal has made it clear that an accused person should have the right to counsel and forcing on a trial date may deprive an individual of his counsel. Obviously the provincial courts are reluctant to do that for the reasons I have just stated.

While we recognize there are an unnecessary number of adjournments, or a large number of adjournments we would like to see avoided, the solutions are not easy to come by unless we were to inject into this system some fairly Draconian measures. For example, simply establishing it through law or otherwise that if counsel is caught in another court there has to be somebody in that person's stead, ready to play a backup role.

All of these problems are going to be of increasing concern to us. The truth is, and I appreciate Mr. Lawlor's recognition of this, we have increased the number of the judiciary at all levels of the courts—particularly at the provincial level—quite substantially in this province in the last five years.

One of the distressing features to me continues to be the relatively modest utilization of courtroom time. As I look at the records that come in from around the province, the actual number of hours the courts are sitting is, in my view, still very much on the low side. So while there may be a superficial appeal to lawyers saying, "Well, appoint more judges, open new courtrooms," that may be part of the answer in certain areas but it's not nearly as important as a more effective scheduling of cases.

There have been innumerable studies and projects in this province in recent years to try to develop better methods of scheduling cases. But ultimately we are faced with certain human factors so you don't know how long a case is going to take.

As a lawyer, you may not know when you start to cross-examine a witness whether your cross-examination is going to take 10 minutes or two hours. Normally, if lawyers are prepared, they should have a pretty good idea, but there are so many uncertain human factors in the trial process that, quite apart from the problem of adjournments, make it very

difficult for scheduling—a motions court where nine lawyers are waiting to be heard.

Certainly, I will review that letter and pass it on to the chief judge. On a motions court it may be there can be better scheduling because I know in other areas of the province they do try to schedule the motions for times other than just at 10 o'clock in the morning in order to avoid that problem. In the judicial district of York many of these motions are scheduled at specific times during the day. But again, the judiciary have an important role to play in this and they must accept any changes with respect to scheduling generally or it's just not going to work. A lot of lawyers stay away from litigation, criminal or civil, just because of that fact. It is not an assembly-line process.

11:40 a.m.

Mr. Lawlor, Mrs. Campbell and I, as lawyers, may all have cases in a provincial court and we may have to sit around all morning waiting for our cases to come on because often the crown attorney and the court doesn't know up until the last minute whether or not certain accused are going to plead guilty.

Let's say I'm the crown attorney and I say, "Look, Pat, your case, I'm sure, won't be reached until after recess, so don't worry about being here until after then or this afternoon." Then, the next thing you know, the case ahead folds; there is a plea of guilty, and in the courtroom there is nothing to do. It's a damnably difficult process.

Mr. Warner: I appreciate that. If I could I will pick up on one thing you mentioned, the utilization of the courts. You said it was, in your opinion, on the low side. That implies a standard, at least in your own mind. What can you do and what are you willing to do to bring the utilization up to at least whatever standard you have in your own mind?

Mrs. Campbell: He is only speaking about the criminal division.

Mr. Warner: That is what it was qualified to, I take it.

Hon. Mr. McMurtry: Some of the figures I have seen with respect to the family court cause me a little bit of worry, but again, it is difficult to be precise. I am advised that, while the court may not be in session, often judges are in chambers with interested parties. Our records may not demonstrate when the judge is involved in chambers as opposed to court.

Obviously we want to keep adequate records in order to meet our accountability to the taxpayers of this province, but we

don't want to create the impression we're clocking judicial performances.

Mrs. Campbell: Which you did in the family court. If you did go to your chambers to deal with something, it was a coffee-break record; and if you were sent down to Kingston to take a court, you were on vacation.

Hon. Mr. McMurtry: I think Mrs. Campbell's reaction, which I witnessed in my early weeks as Attorney General when she was giving me some advice in this area, indicates the sensitivity of the subject when one keeps these records.

There is no easy solution. When we talk to the chief judge about the court utilization he will indicate that his judges are very upset about the number of adjournments and they are ready, willing and able to perform their judicial responsibilities. Yet, on many days, the list just collapses.

Quite apart from the occasional judge who may have too many pressing engagements elsewhere, the fact is that the overwhelming majority of our judiciary are quite prepared to sit the reasonable number of hours a day.

As a matter of fact, in yet another attempt to establish some reasonable standards—Mr. Warner referred to this a moment ago—two or three years ago I asked the judicial advisory council, which is made up of the chief justice of Ontario, the chief justice of the high court, the chief judge of the county court, the chief judges of the provincial criminal and family courts and the senior judge of the judicial district of York, to make a report on what is a reasonable time for judges to sit. There were various articles appearing about courts here being used only three hours a day, and is this reasonable, et cetera.

They gave us a report to indicate that, on average, four and a half hours of actual sitting time was quite a reasonable standard. We thought this might be of guidance to the judges as much as to anyone else.

One has to recognize that there are different standards among the courts. I believe the pressures are greater in the provincial courts and that four and a half hours of sitting time is much more strenuous than for a judge sitting in county court or Supreme Court, in which the trials tend to be somewhat longer and the pressure is correspondingly reduced. All these factors have to be taken into account.

Mr. Warner: I appreciate that, but it might suggest to my mind that what you need, then, is more judges if you want to utilize the space.

**Mr. Vice-Chairman:** Is it not true that the average sitting for a judge in the county and Supreme Courts in the criminal division is only 16 hours a week?

**Hon. Mr. McMurtry:** I would have to look at the different areas; it does vary throughout the province. But 16 hours a week is probably pretty close to what it would be on a province-wide average.

**Mr. Vice-Chairman:** That is considerably below what you consider the norm, which would be 22½ hours a week.

**Hon. Mr. McMurtry:** Again, it will vary. If we are talking about a judge who is sitting in the Supreme Court or county court, where trials tend to be somewhat longer, I'm sure the average sitting time is probably a little higher than that. Again, I recognize that the pressures are often not as great as they are in provincial court. But 16 hours a week is about what it is in many of the provincial courts.

**Mr. Lawlor:** May I make a pernicious suggestion? Why not get some law students summer jobs in a few of the courts? You're talking to the upper crust. They have an in-built defence mechanism for the system; they have to have, really. And while they have served themselves in the past, one loses contact very easily. You will realize, sitting where you are, and where I am, that one loses contact with the operations from day to day and doesn't really know what's going on. Why not find out and give someone a little employment in the process?

**Hon. Mr. McMurtry:** I felt that the records in provincial court were inadequate. Just during the past year or so I have insisted on better and more comprehensive records with respect not only to when the court is actually sitting—and management board is very interested in this information, needless to say—but to what happens during the hours the courts are sitting. I want to know how much time is dealt with adjournments, pleas of guilty as opposed to trials—all of these records. I believe we need better records in order to assist us to monitor the system.

**Mr. Lawlor:** Records are records.

**Hon. Mr. McMurtry:** As to undertaking to hire students or anyone else to sit in the courtrooms and monitor the activities of the judiciary in this province, I think that could be misunderstood.

11:50 a.m.

**Mr. Lawlor:** I was going to say that if Margaret Campbell would like to keep a

record, a running sheet of your activities here in order to justify your existence, you would put in 16 hours a day without any trouble at all; without even lying in your case.

**Mrs. Campbell:** That was true in the courts as well.

It was interesting that, in order to try to clear the lists and cut the costs of the court, I had asked if lawyers could be advised that I was prepared to sit in chambers between nine and 10 in the morning to clear consent adjournments. The answer was there were no funds for that kind of activity. So we clogged the courts, which created more expenditure, I suggest, than that would have caused. You really have to have some imagination in the court operation, I think.

I was going to save this until further in the estimates, but, since we have dealt with some of these problems, I would like to read to you a letter from Dr. Ruth Morris, who I think is well known to everyone here, as she has been very active in the bail project. I think this letter is of interest in perspective:

"Turning to our old favourite subject, bails and JPs, which I am sure we are both tired of"—and I have assured her that she is correct—"if only one could see movement. Thanks very much for your letter and the one from the Attorney General.

"Recently, in doing a talk, I ran over the fact that the JPs' powers go back to the 14th century, so felt a little better that a few years' work on some of the problems accumulated over the centuries hasn't"—she has—"yet made visible inroads on these problems. None the less, seriously, I think the enclosed case history, which I will explain more fully here, illustrates that we are still in the dark ages in this area." The Attorney General has always challenged me to give some specifics and this is one which I think may be of interest.

"Two young men were arrested on one charge of robbery. One was released on his own recognizance, the other one held for show-cause. This was on Saturday night-Sunday morning, April 13. The show-cause hearing was for Monday, April 14, \$1,000 bail, one signature.

"After court at city hall a certain person went to the city hall JP; after a half-hour wait was asked for proof of \$1,000; brought out a bank book with \$470 savings account, ownership for \$2,000 motorcycle, and ownership for \$1,000 stereo, both new. Also said he had been working one-and-a-half years for a certain company, making \$350 a week, \$9 an hour.



"The JP told him he would have to have \$1,000 in the bank. If he could find a friend with that in the bank or if he could put that in the bank, he would be willing to let him out, no problem. Surety was denied and the gentleman left.

"Next, he withdrew money from his account, found his common-law wife at work, asked her to borrow \$600, deposited \$1,000 in the bank—a certain bank—"and got a bank statement, stating that at the close of the day the lady in question had a balance of \$1,147." This was Monday night.

"Monday night, she went to the JP at the Don and she said, 'I'd like to bail out so-and-so.' 'Do you have something to show me for surety in the amount of \$1,000?' 'I have a bank statement.' 'Do you have a bank book?' 'No, I didn't think that would be any good as proof.' 'Well, how do I know you didn't just put it in the bank today? I need to see something to know you have not just put it in.' 'Well, my pay cheque goes right into the bank.' 'Why do you have a chequing account instead of a savings account where you could get interest? He has quite a few serious charges; I need more than a bank statement.' In fact, there was only one charge.

"Where do you work? She told him. 'Do you have anything to show how long you have worked there?' 'A few pay stubs for the last month.' 'That doesn't show me how long you've worked there. I need to have a letter from your employer. Can you get one?' 'Yes.' 'I suggest you come back tomorrow with a letter from your employer. I'm here at two and seven.' 'I need a letter from my employer and my bank book?' 'Well, a letter from your employer.' 'I'll be in at seven tomorrow.' The gentleman who was with her swore on leaving. End of the 14th.

"April 15, Tuesday: As the JP enters the jail he sees the lady waiting. 'Did you bring that guy with you tonight?' 'No.' 'Who was he?' 'A friend. We had been waiting two hours; he was just upset.' She's called a few minutes later; benches piled up and a few men washing floors, water on the floor. 'Did you bring that letter?' 'Yes.' The bank statement produced. 'I don't want to see that.' Puts it down; gives work letter. 'If you had brought your friend with you, I wouldn't have let you bail this man out. Bring so-and-so down. Step aside while I do someone else.' Called back; the accused is there. 'Is this him?' 'Yes.' 'Do you know her?' 'Yes.' 'What's her name?' He gave it. 'What's her last name?' 'I can't remember.' This was a common-

law wife of this gentleman whom he knew. 'But you don't know her maiden name? Well, I can't do this. You don't know her well enough. If that was her husband last night, I can't let him out to you because his conduct was really bad. I could charge him with . . .' 'And also I've got this letter from the crown attorney.' 'I'm in charge here. I don't want to see it.' One more person comes in. JP: 'Well, I'll do him, but I won't do any more. I'm in an inch of water and can't hear any more.'

"Wednesday: Different JP in the afternoon. Turned down because she had already been there twice. She had the crown approval Tuesday and Wednesday, and the JP refused to look at it."

Could that be part of the reason for people being needlessly in jail?

Hon. Mr. McMurtry: Mrs. Campbell, I think anyone can adopt an anecdotal approach to any set of circumstances.

Mrs. Campbell: Oh. But you have always invited me to give you stated cases. Here it is, and isn't it a good one?

Mr. Warner: You are cornered this time.

Mrs. Campbell: And euchred.

Hon. Mr. McMurtry: To suggest that what appears to be an unusual and unacceptable proceeding—as I think is being suggested here—is the standard performance across Metropolitan Toronto or across the province is quite unfair to many dedicated individuals within the administration of justice.

I continue to invite you or Dr. Morris or anyone else to advise us of cases where individual justices of the peace are performing in a manner that is not in the best interests of the chief judge, and we will immediately transmit that information to the chief judge who is, of course, responsible for the supervision of the JPs.

Mrs. Campbell: I will gladly give you the names of this case, but I have anonymized them because obviously there is a trial somewhere.

12 noon

Hon. Mr. McMurtry: Yes. I would like to have them because it is important and helpful to have.

It is interesting to note that a lot of efforts have been made to assist people verify bail. You know that the bail-verification projects are of vital interest to the Ministry of Correctional Services because, quite apart from any of the problems that exist within the administration of justice it's quite evident that by reason of the issues that have been discussed in relation to the alleged perception

of the Minister of Correctional Services with respect to who should be or might be in jail, within the government there is a ministry which has a very vested interest in facilitating bail procedures for obvious cost reasons. So to that extent there are healthy forces that may be countervailing, perhaps, I don't know.

We have co-operated with the Ministry of Correctional Services with respect to the bail-verification projects to try to remove unnecessary problems within the system. I am not backing away from my original invitation to people to identify case situations where they think they have been dealt with unfairly, and for Dr. Morris to document the information carefully. That's of help to us because we can pass this on to the chief judge who can deal with it.

**Mr. Warner:** You are treating this as an isolated case.

**Hon. Mr. McMurtry:** No, I'm just saying that I reject the suggestion—and in fairness to Mrs. Campbell she may not be asking us to draw the inference that I draw from her remarks—that this particular situation represents the standard of conduct of bail justices of the peace throughout the system. That's the only point I'm making.

**Mrs. Campbell:** I think it is important, Mr. Chairman, to understand, Dr. Morris and the Quaker committee have made representation over a considerable period of time. You will recall they were invited, I think at my request, to attend when we were studying the Provincial Offences Act because of their concerns about JPs generally.

I had asked her at one stage if she could produce a case which would tend to support their statements. I think you must recall, and Mr. Campbell would recall, that at the time they appeared before the committee—and I'm not sure whether the Attorney General was here or whether it was Mr. Sterling at that time—they did give in anonymized terms and more general terms their experience.

She has been with the bail project which has just celebrated its first anniversary and is now changing its direction somewhat. She is one of those who, working in conjunction with the Minister of Correctional Services, is prepared to be at the lockup at three o'clock in the morning in the first instance because of the lack of space to do it adequately at the old city hall. This is a dedication that I think has to be accepted by the ministry.

In the Attorney General's letter to me he had promised—and I am sorry I don't have the letter but she remarks: "With regard to Mr. McMurtry's letter I am delighted that

finally someone has received a response after so many months.

"Among the outstanding questions remaining are the following: He speaks of further meetings being between me and various persons. I have been invited to no such meeting and know of no action being pursued on this subject. Last spring I was told steps were being taken and I would be contacted in the fall about their results, but I can only assume that this has been lost sight of."

I think what she is saying is there is a problem, it is not being addressed and this case may well be a bizarre case but it is in the context of her general concern about the problem.

**Mr. Lawlor:** If you remember, you and Allan Leal and I sat down with this person at a much earlier time and went over it.

**Mrs. Campbell:** Yes, the chief judge of the county court was also present.

**Mr. Lawlor:** Yes, that's correct.

**Mrs. Campbell:** And various staff members; I think Mr. Takach was there. There were a number of us there. From what she says 1,400 years is a long time, but do we have to wait another 1,400 years before we can correct this?

I do not accept that our administration of justice is in a mess, but I do say there are areas that need to be addressed, and addressed promptly. I would ask the Attorney General what he would do if I gave him this because one of the difficulties I have with the ministry is that I do send material and make requests for information from time to time, but I honestly don't have time to diarize the thing. Therefore, I know the usual two months or so go by very quickly and I never get the answers back on these things.

This one ought to have some very real prompt consideration so the Attorney General may know how often this kind of thing happens because, as you know, they ask that there be some guidelines available for sureties. The Attorney General, I think—I couldn't disagree completely with him—felt that circumstances alter cases, and of course they do, but surely there could be some guidelines, particularly when you have the letter from the crown; whether that material ought perhaps to be considered by a JP.

**Hon. Mr. McMurtry:** I hope it would be considered. You know I can't give the JP guidelines.

**Mrs. Campbell:** No. I wasn't asking that. I was asking that they would be consulted in the preparation of their own guidelines.

**Hon. Mr. McMurtry:** They do have training in this regard, but again this is a matter on which I would like particulars and the identity of the JP involved so I can pass this information on. I don't have to do it now, Mrs. Campbell, but I will pass it on to the chief judge and we will try to get some response.

I have just requested from my colleagues in the ministry a copy of my letter to Dr. Morris and I will arrange for a meeting involving her to assess, first of all, what is being done and to receive her views as to what else might be done in the circumstances.

12:10 p.m.

**Mrs. Campbell:** I think the letter to which she refers was a letter to me, a copy of which I sent to her, but I can't be sure about that.

**Mr. Vice-Chairman:** Mr. Warner, a supplementary?

**Mr. Warner:** I am pleased that the minister is going to take the matter seriously. From the correspondence in my file from Dr. Morris, this issue goes back to long before I became critic and, I gather from Patrick, two or three years from when you had a meeting.

**Mrs. Campbell:** For a long time.

**Mr. Warner:** So it goes back a long time. Quite frankly, from the letters I have in my file, there is very little indication of the matter being taken seriously by the Attorney General. I was puzzled by that. Now, apparently, starting this morning, the Attorney General will take the matter seriously.

**Hon. Mr. McMurtry:** I can assure you it has been taken seriously by me for many years. I would remind you, Mr. Warner, I was a defence counsel in this jurisdiction for more than 17 years. I did a lot of defence work as a student.

**Mr. Warner:** I am aware.

**Hon. Mr. McMurtry:** So I can say my concern in this area—

**Mrs. Campbell:** So is the crown.

**Hon. Mr. McMurtry:** —goes back almost before you were born.

**Mr. Warner:** Well, my goodness! I am even aware of your batting average as well.

**Mrs. Campbell:** You were also an acting crown from time to time, is that not so?

**Hon. Mr. McMurtry:** Yes.

**Mr. Lawlor:** Mr. Chairman, there are a few matters before we quit today. I have been waiting for some time to get to and skip over, not lightly, particularly the last

matter. The first matter is what is happening to Williston? We have been anticipating for a long time now—two or three years—getting a court revision; the rules of practice and so forth. What's wrong with that?

**Hon. Mr. McMurtry:** We have Mr. Williston's report. I think I indicated that at the beginning of the estimates. I may not have. I wanted an initial review of the report so when I tabled it I could perhaps give some response other than just tabling it. But we will be circulating the report very shortly. It's being printed right now and it will be available in the very near future.

**Mr. Lawlor:** The second matter I wanted to mention—

**Mr. Vice-Chairman:** Excuse me. Did you want to mention something on this?

**Mrs. Campbell:** I was suggesting if he were ill, he is a friend of mine and—

**Mr. Leal:** He had open heart surgery.

**Mr. Vice-Chairman:** The second item, Mr. Lawlor.

**Mr. Lawlor:** Have you resolved your quarrel with Mr. Wishart?

**Mr. Leal:** We sure did. Wishart who? Wishart Spence?

**Mr. Lawlor:** Your predecessor in title.

**Hon. Mr. McMurtry:** I was just thinking of our dear friend, Mr. Justice Wishart Spence, whom I used to lock horns with. So whenever I hear "Wishart," I think of poor Mr. Justice Spence.

**Mr. Lawlor:** The electoral reform, something, act.

**Hon. Mr. McMurtry:** Yes. I believe that has been resolved.

**Mr. Lawlor:** Okay. I won't push it any further. On constitutional matters, we will have a freer opportunity next week. Just one word on it. I hope your department, which has an enormous input into the thing and the ear of the Premier of this province, notes carefully the concordances between the five major reports coming from the anglophone and other jurisdictions, et cetera.

The areas of agreement here are striking. It should lend itself, I would put it, to the government feeling secure enough to grasp that nettle a little more closely than it has with respect to positive statements and responses to Quebec.

I need not say more. You know what these reports contain. But maybe those striking parallels and reaffirmations through Pepin-Robarts, the Canadian Bar Association, which are an amazing coming together of these



things, would salve at least, if not heal, the long-outstanding quarrel and bring some kind of reconciliation to the picture. Your government has not done very much. It sits on the fence.

When Wells does anything, he asks a series of questions. I don't know whom he is asking, possibly himself. Gazing at one's navel will not keep this country together.

Mrs. Campbell: I agree.

Hon. Mr. McMurtry: We have been very much involved in the process, Mr. Lawlor. Mr. Wells and I are the only two members of the Ontario government who are on the so-called continuing committee of ministers on the constitution. We have met regularly for the last several years with our counterparts in other provinces and have participated in the federal-provincial constitutional discussions. It is a matter to which I give a very high priority. I am in frequent communication with the Premier in relation to this particular matter as well as to—

Mrs. Campbell: Et al.

Hon. Mr. McMurtry: Et al. As I hope I have said in the past, I am very happy to hear from members of the committee, like yourself, with respect to your views. I gather there is a resolution before the House next week, part of which will be in relation to the possibility of setting up a select committee. Maybe through that vehicle or some other—

Mr. Lawlor: We will use that vehicle, at least for the time being.

Hon. Mr. McMurtry: I don't know what the House is going to do in relation to that. In any event, I am always more than happy to discuss these issues with you or any other member of the committee.

Mr. Lawlor: The third thing I want to mention—there are four things—is the apparent change in the direction of the whole law. If one reads Ontario Reports from week to week, which, bless us, I hope no one ever does, it seems that for the last few years there has been a very considerable switch, which should be taken note of by the Attorney General's department—part of our responsibility is to alert you, if you are not—on to administrative or quasi-administrative law problems. There is just a plethora.

I have before me a very recent—April 11—issue of it and case after case mentioned is a *seriatim* case: for example, *Mississauga Hydro Electric Commission et al versus Ontario Hydro*; *Stone and Law Society*; *Ozog versus the Registrar of Motor Vehicles et al*; *Ontario Human Rights Commission et al versus On-*

*tario Rural Softball Association*; *Hartman versus Minister of Commercial and Consumer Relations for Ontario*, and so on.

The role of government and governmental agencies in the case law is becoming predominant. I have another instance which bears out the same thing. I picked them up at random and was struck by them, and I thought I should mention them. Have you any idea what is happening?

Hon. Mr. McMurtry: The statutory powers procedure legislation and the judicial review legislation, as you know, Mr. Lawlor, were passed in the early 1970s by this Legislature. That represented, in my view, a very major reform. It seemed to me it could be anticipated that these administrative law cases would increase in a large number as a result of this very important form of legislation. The deputy reminds me that in the creation of the divisional court a much higher status is given to these matters, which used to be dealt with by a judge alone in weekly court. Part of the process, I guess, is that there is a much larger number of cases now than in the first several years following the legislation. It is part of the educational process of the bar.

People become more familiar with the processes. Of course, some will say people become much more litigation-minded in some areas. There are many more special-interest groups now than there were a decade ago, and they are better organized when it comes to challenging certain decisions made by administrative boards, quite apart from the individual. I am surprised that it has happened.

12:20 p.m.

Mr. Lawlor: It is a new phenomenon, and it may have implications; I have not worked them out yet. At this stage I think it is best just to bring them to your attention to see what it really means in terms of the impact on government services and the weight of government on the courts. Not that I have any critique. I was just trying to draw out what is involved here.

The fourth thing I want to get into—if I can bring myself to it and I speak far more in sorrow than in anger—has to do with a couple of bills that came through during the winter. You did not attend upon them, and I wish to blazes you had, because you feel far more secure in your role and know exactly what you are doing in a particular context. I am, of course, speaking to Bills 202 and 203, which are hung up, quite justifiably, on the Order Paper—

Hon. Mr. McMurtry: Not for long.

Mr. Lawlor: —because of an oversighted slip through the committee. You had, on your side of the fence, some amendments—I think your amendment should be a deletion—which were minor in nature. It is into third reading and you do not know what to do with it. My advice, for what it's worth, is to forget all about it and let it die on the Order Paper.

Hon. Mr. McMurtry: We probably will be moving third reading very shortly, Mr. Lawlor.

Mr. Lawlor: You really think so? You are going to let it go through just the way it is?

Hon. Mr. McMurtry: Yes.

Mr. Lawlor: What a shameful procedure. Margaret, you were not in on those hearings, were you?

Mrs. Campbell: No. They were not held in the justice committee.

Mr. Lawlor: The Liberals and the Conservatives joined in an atavistic return to nature. The only man who defended the position we were taking was Mike Bolan. All I can tell you is they soon got rid of him. He indicated some rationality and some sympathy, as a practising lawyer in tort matters, to the committee. And he was replaced the next day by, shall I say, one of the more rural members. There was a total consensus.

There was also something that was strange in a committee, a kind of vindictiveness throughout. It was not enough to have wretched legislation going through; you had to twist the tail of the cat here and there, and twist it in some ways which run totally counter to the established and hard-fought-for positions attained by this Attorney General in his Provincial Offences Act. They have written clauses into this legislation which were not there originally.

If I may misquote the Attorney General on one of his favourite phrases, "Good politics sometimes and very often makes bad law." This is good politics and bad law. That is what it all comes to.

He had a law reform commission with a very astute guy sitting in the chair. They produced a report—

Hon. Mr. McMurtry: It comes more closely to home than that. My former and long-time partner, I am first to confess, had a major role to play in the law reform commission report. He and I have had some very interesting debates. I just want to interject at this particular point that he is now a member of the law reform commission, I am happy to

say. He is Mr. Barry Percival, QC, who is a medallist at Osgoode Hall and a very distinguished practitioner—

Mr. Leal: And a medallist in engineering.

Hon. Mr. McMurtry: And a medallist in engineering. So he has a more practical bent than some of us.

I just want to make this point: Some people may be interested in the legislation more from a political standpoint than a legal standpoint; that inevitably happens with respect to any piece of legislation before this House. But I can assure you that my interest was purely legal.

Mrs. Campbell: Ah, Roy, I don't believe it.

Hon. Mr. McMurtry: It happens to be so. I realize that my critics and my colleagues have always been, generally speaking, more than fair with the present Attorney General. I take strong exception to the suggestion, even advanced a little facetiously, as I believe it is at this moment, that the senior law officer of the crown is going to be motivated by any consideration other than what is the best law in the public interest.

I have debated this matter with, and perhaps you ought to speak to my former partner, Mr. Percival, about this. I think I persuaded him, if I do say so myself, that the legislation that departs from the recommendation of the Ontario Law Reform Commission report is going to work out very well. To show that good lawyers can disagree, in the Advocates' Society there was some significant disagreement within their ranks, some very much in support, some less so, from a purely legal standpoint. As you know, it is a professional body that has to live with this type of legislation on a day-to-day basis from the point of both potential plaintiffs and potential defendants.

I want to make the point very emphatically that, while we perhaps have some disagreement, I was very interested in the progress of this legislation. I think section 4 is the controversial section. It is one I have thought about a great deal and personally believe is going to work out well.

I have not looked at that section for some time. I am quite happy to take the next couple of hours to do this, Mr. Lawlor, because I believe it is a good law. For example, I know there is some concern about how this is going to affect infants. If you look at that section carefully, the court does have the discretion to protect infants from highly careless acts that border, say, on the wilful; for example, the occupier who knows—

Mr. Lawlor: It is not the present standard of care.

Mrs. Campbell: No, it is not

Hon. Mr. McMurtry: I am willing to make the prediction that this law is going to work out very fairly from everybody's standpoint. I hope that we will all be around in some capacity in this Legislature to continue that debate in the years ahead.

Mr. Lawlor: This is what they said during the committee hearings—that the judges would rescue us from our folly. This is part of the reason they voted for it. They will find ways around it. I am going to worry this bone a bit, because it is one thing that has left a bad taste in my mouth over the years I have been here. It is the one thing that really bothers me.

Did you follow what the deputy proposed in a law commission report in 1973 or so, which gave a fairly thorough review of this in line with Scottish law, in line with the new moves made in Britain, et cetera, and all Commonwealth countries? They have all moved forward on the law. You have moved backwards.

Have you looked at the MacMillan, Rooke, Avery and Forbes' letter to you of April 11, 1980? It came in after the hearings. It went to the policy development division.

Hon. Mr. McMurtry: No, I have not seen that letter. Is that Stu Forbes?

Mr. Lawlor: This tickled me. It filled me with hilarity. Law does not often do that.

The Acting Chairman (Mr. Warner): On that note, Mr. Lawlor, perhaps we could bottle up our wisdom for another day.

Mr. Lawlor: We will get to it tomorrow. Keep your good temper until I get back.

Mr. Acting Chairman: I remind the committee that we are on vote 1401, item 1. Mr. Ziemba had indicated an interest to raise an issue. I assume Mrs. Campbell likewise has something to raise.

12.30 a.m.

Interjections.

Mr. Acting Chairman: Before you leave, is the committee willing to consider next Wednesday morning at 10 a.m., or even 9:30 a.m. if that's agreeable to the committee, on two private bills: Bill Pr2, An Act to Revive Christian Reformed Church of Wallaceburg, Mr. Watson, and Bill Pr9, An Act to Revive John Madronich Limited, Mr. Kerr?

Mr. Ziemba: Make that 9:45 a.m.

Mrs. Campbell: I suggest we should say 10 o'clock. If we could do it between 9:30 and 10—I don't think we can.

Mr. Ziemba: Mr. Chairman, 9:45 a.m. would be acceptable to us.

An hon. member: Shouldn't take long anyway.

Mrs. Campbell: I think 9:30 a.m. We have to at least appear to give it due consideration.

Mr. Acting Chairman: Can you rouse yourself earlier that morning? Is that possible? Is 9:30 a.m. agreeable? All right, 9:30 a.m. next Wednesday; two private bills.

Mrs. Campbell: Nine-thirty for that; 10 o'clock for estimates.

Mr. Acting Chairman: Ten o'clock, the regular sitting for estimates.

The chair is not in a position to move motions or debate matters. Some members of the committee had brought to my attention an interest, since the Confederation debate would be taking place, not to have the committee sitting concurrent with that. My understanding of the timetable is that next Wednesday the Confederation debate will be on in the afternoon from two o'clock until six o'clock only on that day, and no question period, of course, so Wednesday would be free. I don't know what the conflict would be next Thursday in the afternoon.

Hon. Mr. McMurtry: I don't think the committee is supposed to sit when the House—

Mrs. Campbell: I don't think we were sitting next—

Mr. Acting Chairman: The House leaders' agreement was that the committees would not sit for the opening day and closing day of the debate but that in between the committees should make the decision themselves as to whether they wish to sit or not.

Mrs. Campbell: My understanding from Mr. Philip was that we were not going to be sitting next week. Now that was undoubtedly before the House leaders' meeting, but it seems to me for us even to give the impression we are not all vitally concerned in that debate is a very poor impression. If the House isn't sitting on Wednesday morning, then I wouldn't object but I am certainly not prepared to sit personally, subject to what the committee does say, while the House is debating this crucial issue.

Mr. Acting Chairman: Next week that would be Thursday afternoon and Friday morning. Do you wish to put that in the form of a motion?

Mrs. Campbell: Do we have to?

Mr. Acting Chairman: Unless there is a consensus—



Mrs. Campbell moves that the justice committee sit next Wednesday commencing at 9:30 a.m. until noon and that it not sit Thursday or Friday during the Confederation debate in the House. Time should not be taken from the estimates.

Time is only taken when the committee is actually sitting. The motion is in order. Is there any discussion?

Motion agreed to.

**Mr. Acting Chairman:** This committee stands adjourned until—

**Mr. Ziembra:** Just a minute, Mr. Chairman, we don't adjourn before one o'clock and I have an item I wanted to raise with the Attorney General.

**Mr. Acting Chairman:** It is my understanding we normally adjourn at 12:30 p.m.

**Mr. Ziembra:** No, we don't.

**Mr. Acting Chairman:** We recess at 1 p.m.

**Mr. Ziembra:** That puts me off; I have been waiting for 20 minutes.

**Mr. Acting Chairman:** The chair apologizes. I understand it was—

**Mr. Ziembra:** That's why I put you there.

Interjections.

**Mr. Acting Chairman:** I apologize. I assumed the lunch hour began at 12:30 p.m.

**Mr. Ziembra:** Mr. Attorney General, I would like to bring this matter to your attention and urge you to come up with some sort of centralized computer system for JPs accepting charges. I will give you an example of what is happening in my community in particular that is really disturbing to people in west Toronto.

On one street we have a woman who is mentally disturbed. She lives with her son. Over the years there have been many problems with her neighbours. What has happened is that neighbours would find themselves charged with criminal offences by this woman and because it was the Ukrainian community and they couldn't speak English—some of them didn't want to hire lawyers—they were actually convicted of criminal offences. They were convicted of assaulting her or her son.

It turns out that all these actions, were provoked by the mentally ill woman and her son, who also was mentally ill or under her control and did what she wanted. Things went on like that for about five years. I had heard about it back in 1975 and I must confess I didn't pursue the matter. I thought it was in the hands of the courts and everything was as it should be. In 1979 a couple moved in next door. The previous owners sold their house because

they couldn't handle the situation any more. They figured, "To hell with it." They moved out but they didn't tell the new owners about the lunatics living next door.

Before long trouble started and the wife found herself in court charged with assaulting the son or mother. To make a long story short, she got a lawyer who is a member of your family. The bill was not too high to start with but because there were further instances, the bill grew and grew. She ended up owing \$2,000 in legal bills.

I questioned that and went with her to court the last day. We talked to the deputy crown attorney at the Etobicoke criminal court and Mr. Metusiak indicated to me that this does happen. The justices of the peace are sometimes not too sensitive to prisoners who are locked up, but they are certainly sensitive to people who come in from the community, especially people who might hit them at the right time before lunch or when they have lots of things on their table and they accept criminal charges from people in the community.

In this case, this woman who was mentally ill was able to lay 50 charges against one of her neighbours, dozens of other charges and she was able to charge a dozen times this new couple who moved in. Nobody twigged to the fact she was mad. They just accepted these charges.

People have found themselves in court, have found themselves paying heavy legal bills. Sometimes, without going to a lawyer, they have found themselves convicted. It has been suggested there should be a central clearing house for cases like this, so that when a person is shopping around for a JP who will accept a charge, once one JP finds out that person is nuts he can somehow put that on the record and others will refuse to accept charges.

The way my problem was resolved the deputy crown attorney, Mr. Metusiak, undertook to write the local police inspector as well as to instruct the JPs in his area that if this woman comes before them, charges should be cleared through him before they are accepted. That's a sort of solution to the problem, but I'm worried that with all the computers we have and with this great system you are heading up, this can happen. Someone who is obviously mad can get hold of any JP he wants and just keep shopping until he comes across one who will accept the charges, take innocent people before the courts and have innocent people found guilty.

They didn't have the money to defend themselves or to appeal these convictions.

They have moved out now, but I have petitions from them and the street has been under a state of siege for the past five years. She is still there. The situation has toned down, but it's a worrisome thing and I would urge you to come up with some sort of central clearing house for charges laid so that people could not go from one JP to another until they have found one in a receptive or friendly mood who will accept somebody's word for a criminal offence having been committed.

**Hon. Mr. McMurtry:** The issuance of a process by JP is a very important matter. It is invoking the criminal law and calling someone to answer a charge before the courts. Obviously, all JPs have to take the responsibility and I respect this very seriously. I would hope that the proximity of the application to the lunch hour would not unduly influence—  
12:40 p.m.

**Mr. Ziembra:** Over 15 charges were accepted.

**Mr. McMurtry:** —their discretion. It's a judicial function that is performed by the JP in making that determination as to whether a charge process should issue. I will come back to the role of the JP in a moment. When you say innocent people are convicted you are going far beyond the JP or indicating, in effect that the judge who hears the case is convicting innocent people.

Unless we know all the facts, I think that might be an unfair statement in so far as the judge who is hearing the case is concerned.

**Mr. Ziembra:** No, it's not unfair.

**Hon. Mr. McMurtry:** We hope our legal-aid system provides for people who can't afford a lawyer. That's the purpose of a legal-aid system—to provide a lawyer.

Quite apart from the cost of the computer system, and we would like to see far more utilization of computers within the justice system to have better records, whether a person who has been rejected by one JP should be deprived or prevented from attending on another JP, I'm not sure. This is a question I would like to reflect on at least overnight.

I would like to know, at least in private, the name of the person you are talking about and some more details, because I would like to find out what happened here.

**Mr. Ziembra:** I will give you—

**Hon. Mr. McMurtry:** As I say, I'm not sure. I'm not even sure of the legal position as to whether the fact one JP has refused to issue process should end the matter. I don't think it should necessarily, because it

may be the person who is dissatisfied may go and see another JP with additional information.

My off-the-cuff opinion is that individuals of the public should not necessarily be deprived of making an application before another JP, but I would like to reflect on that. I haven't been JP-shopping.

There is a famous lawyer and later judge who used to reflect on the fact that the knowledge of the circuit guides as to who is going to be sitting at a particular time was perhaps more important than an in-depth knowledge of the law. I suppose there is a certain human tendency to want to get your case before a judge who you think may be more sympathetic to the position of your client. Any abuse of the process, such as suggested by yourself, where people are forced to appear in courts unfairly or maliciously is a matter that is very distressing to me.

**Mr. Ziembra:** Can you tell me about these two JPs? Here is one who discriminated against someone seeking bail because the fellow had a motorcycle and a stereo set, and he swore. We have another JP confronted with a woman who is irrational, schizophrenic, obviously mad—

**Mr. Acting Chairman:** Careful, you are describing some of the members of the Legislature.

**Mr. Ziembra:** Why would that JP not be as sensitive to this woman as he was to the applicant for bail?

**Mrs. Campbell:** Is that the case? I would like to know personally because I am interested in this. It isn't always possible to make some kind of conclusion—even irrational behaviour may not indicate that somebody is anything other than upset. I don't know anything about it, but I'm interested in what you're saying. I have a concern, I guess, about JPs refusing and there could be the day when she had a very justifiable complaint like this one because somebody has been there twice—

**Mr. Ziembra:** I can bring the couple before the committee, the McMahan's, the couple that suffered as a result of this happening and they can explain in their own words what happened to them. They would be very pleased to appear before us. Could I do that?

**Mrs. Campbell:** Is there no other way this could be addressed?

**Mr. Ziembra:** I could bring the director of mental health from the city of Toronto who

investigated the matter away back when and declared the woman mad.

**Hon. Mr. McMurtry:** I don't know that the director of mental health has that jurisdiction.

**Mrs. Campbell:** In the course of your representation of constituents.

I recall when we were in England, the gentleman who was chairman of the committee something akin to our Ombudsman committee, said, "I get all of the nuthouse."

**Mr. Ziemba:** It would be funny except it has cost them an awful lot of money and it costs an awful lot of people a great deal of heartache and anxiety. They are still living under a sense of harassment in that neighbourhood.

**Hon. Mr. McMurtry:** I will have some thoughts, perhaps when we reconvene, as to what might be done to better protect a citizen from an unfair issuance of process. It would be helpful if you could share some of your file with us as part of the process to find out how that could happen. You talk about 50 charges?

**Mr. Ziemba:** Fifty charges against one neighbour.

**Hon. Mr. McMurtry:** It's hard to imagine how that could happen in the normal—well, it's not the normal course of events.

**Mr. Ziemba:** It's really bizarre.

**Hon. Mr. McMurtry:** I might like to comment on it further.

**Mr. Acting Chairman:** Have you completed your remarks, Mr. Ziemba? I may have cut off the member for Lakeshore with my misunderstanding of the time when my hunger took over.

**Mr. Lawlor:** I was anticipating rising about 12:30 p.m. I can go ahead again if that is what you wish.

**Mr. Acting Chairman:** I wasn't sure whether you had completed the matters you wished to raise.

**Mr. Lawlor:** No, I haven't. You want to sit until 1 p.m., do you?

**Mr. Acting Chairman:** That is apparently what the committee wishes to do.

**Mrs. Campbell:** You have 10 minutes.

**Mr. Lawlor:** As I was saying in a Rabelaisian vein just before—and I want to tell the Attorney General when I am most facetious that is when you have to pay attention to me. I am intensely furious at that point. If you remember Bernard Shaw, "I am only serious when I'm joking."

I have an article in front of me—I take it this B. A. Percival is your partner, et cetera?

**Hon. Mr. McMurtry:** Yes.

**Mr. Lawlor:** It's an excellent article back in the Law Society of Upper Canada's special lectures, 1973. I was anticipating having lunch with you in order to be convinced you will meet a no more open person in these things. Nevertheless, it would be a pretty dynamic luncheon.

Percival is the man who says, "The occupiers are at liberty to fulfil that country's then fanatical obsession with the sanctity of real property rates even over that of human lives."

**Hon. Mr. McMurtry:** Excuse me, would you identify that article for me, Mr. Lawlor?  
12:50 p.m.

**Mr. Lawlor:** Law Society of Upper Canada special lectures, 1973, page 105 and 104, which I used throughout the thing and Percival was dead on and in line and I wish he were more persuasive. Imagine being overloaded with authority at this time in his life.

I was mentioning an article that was sent to your office recently from MacMillan, Rooke, Avery and Forbes, barristers and solicitors which I would ask you to look at, and which I got a kick out of because it reverses, turns the tables on your legislation completely.

It says the standard of care effectively has been raised rather than lowered, and he doesn't make the discrimination as between rural and recreational properties where you, having obviated the three tiers, et cetera, have set up a geographical division instead to perplex, complicate and make an abortion of the law.

**Hon. Mr. McMurtry:** Do you share his view? I'm looking forward to reading his letter. I know Stu Forbes very well and have a high regard for him.

**Mr. Lawlor:** It's extremely interesting. He turns the tables on you. I hope the Attorney General reads that one. It will be interesting to see—

**Hon. Mr. McMurtry:** I thought you were accusing us of lowering the standard.

**Mr. Lawlor:** No, I was accusing you of raising it and isn't that wonderful? Once you discover this is what you have actually done and don't know it, you may not be prepared to go forward with the wretched legislation.

**Hon. Mr. McMurtry:** It's very engrossing how lawyers can always reach a consensus on these matters. We have distinguished lawyers on both sides, one saying we've raised the



level of care and other distinguished counsel saying we've lowered it.

**Mrs. Campbell:** Dare I get in the middle?

**Mr. Lawlor:** I think this argument is howlingly funny. I wish to God it had been made before the committee because it would have set them back on their heels. We may have a future conversation on that. As the judge said of the courts, "We watch the cases come through and see the law from your point of view distorted to meet human needs in this particular context."

**Hon. Mr. McMurtry:** We provided the framework within which justice can be achieved.

**Mrs. Campbell:** You're absolutely wrong on that.

**Mr. Lawlor:** The last resort is the judges; we don't have to rely on the law, just on the crown, thank heavens.

The legislation was not well defended before the committee. You said something on the Advocates' Society, except that they came divided; again the big-city slickers—we're all wet behind the ears—have problems within their own organization and this is the division. The bloody thing irks me. They weren't able to speak with one voice, though the two lawyers at the table obviously thought the legislation was really defective in its operation.

This will tickle you, Mr. Leal, what did happen is that two University of Toronto professors, the only people who had really worked on the legislation, had surveyed it in the light of developing English law in this particular area, came before the committee and were extremely articulate. That's one of their problems. When university professors come before legislative committees, by and large the committee turns off somehow because they make nice prickly points. But from a lawyer's point of view, a lawyer who is not just academic, someone looking to healthy law, et cetera, it is acceptable and even somehow delightful. At the same time, that is not the way it was received.

Possibly that did the legislation more harm than good at the end of the day. The nice points, the distinctions and the pointing out where case law was going, et cetera, was lost. My quarrel with you is that your legislation is retrograde in its impact.

I can't take much longer on it. Do take a look at that section 203(10). I remember sitting with you on the committee on a thing where you stood up stoutly against the barrage—

**Hon. Mr. McMurtry:** It was the general power of arrest and we continued to defend our position on that. As recently as last week I met with 96 or 97 police chiefs in Aylmer and again defended our position, that we were going to introduce the general power of arrest. We will be able to debate this next time but, no, except if it is demonstrated there is a specific problem.

The vandalism that is caused to farmers, for example, throughout this province has reached staggering proportions. We have given police a specific power of arrest to deal with a specific problem as opposed to a general power of arrest which we have continued to deny the police community.

**Mr. Lawlor:** You are really a delightful person. The section had nothing whatsoever to do with farmers and vandalism. Let me assure you of that.

**Hon. Mr. McMurtry:** No, I can assure you.

**Mr. Lawlor:** No, it did not. It had to do solely with headmasters' association of Ontario.

**Hon. Mr. McMurtry:** I said, "for example, the farmers."

**Mr. Lawlor:** Well, you can switch so easily.

**Hon. Mr. McMurtry:** No. The schools were another group that were very concerned about trespassers. I have been discussing these issues with the agricultural community of this province for the past several years. They have a very significant problem.

You are quite right. We have also been hearing from the schools as to their problems in relation to trespassers, perhaps more recently than from the farmers. We consider that very carefully to provide a reasonable level of protection to individuals who really feel they have been very badly neglected.

**Mr. Warner:** You are giving away a principle.

**Hon. Mr. McMurtry:** I am not giving away a principle at all.

**Mrs. Campbell:** Why didn't this come to the justice committee? I think that is the keynote of the whole thing.

**Mr. Lawlor:** I wish you had been there, Margaret. We would have had a hell of a good time.

**Mrs. Campbell:** I spoke in the House. As I said, I felt that I had some cotton stripe down my back, as I know Mr. Sterling felt too, as he more or less stated in the House.

**Mr. Lawlor:** Two small propositions to wind it up:

One, you treat children under this legislation in precisely the same category as you treat criminals.

Two, so sacred is this new multicorporation called shopping malls in your wretched legislation that one may not penetrate the virginal surround of the thing. They have been given special status in our laws, remov-

ing them from human contact, except where they can make money.

Those are my two objections. Bad legislation, Mr. McMurtry, and I hope you rethink it.

**Mr. Warner:** Commercial cathedrals.

The committee adjourned at 12:59 p.m.

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**From the Ministry of the Attorney General:**

Leal, H. A., Deputy Attorney General



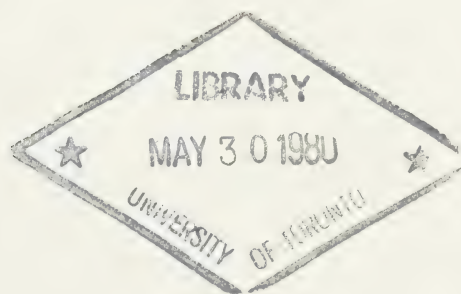




# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**  
Thursday, May 1, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, MAY 1, 1980

The committee met at 3:58 p.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

**The Acting Chairman (Mr. Renwick):** I recognize a quorum, and I recognize the member for Lakeshore.

**Mrs. Campbell:** I wonder if we could have clarification, Mr. Chairman. We have built in the rules as indicated by our chairman from the start. We have been proceeding on the first vote and I have nothing further of a general nature on that vote.

On vote 1401, law officer of the crown program:

**Mr. Acting Chairman:** Mr. Lawlor, are you satisfied on the first vote?

**Mr. Lawlor:** I think it's okay.

**Mr. Acting Chairman:** Mrs. Campbell, I have one item which I think is appropriate under the first vote. Would you take the chair?

**Mrs. Campbell:** Sure. If you think it's necessary.

**Mr. Acting Chairman:** Oh, I think it's only that the forms are important.

**Interjection:** Welcome to the chair.

**The Acting Chairman (Mrs. Campbell):** I will recognize the member for Riverdale. There's Mr. Ziemba.

**Mr. Renwick:** Thank you, Madam Chairman. I had an opportunity, Mr. Attorney General, to have a few words with the deputy just before you arrived and I don't want to labour the matter, therefore, of the question I raised in relation to the Sandy versus Sandy case. I think in due course I am going to get a memorandum about it and I believe the deputy recognizes that probably a change is necessary to make certain of your awareness of it. I'm glad to know you had notice of it and did appear in the Court of Appeal on that case.

I mentioned to the deputy the similar situation in this case which involves Eldo-

rado Nuclear and the application of provincial legislation governing environmental concerns in the uranium industry which is before Provincial Judge Sam Murphy, who reserved judgement. Linda McCaffrey, a lawyer seconded from your ministry and the Ministry of the Environment, argued the matter of the applicability or, to use the accurate phrase you used the other day, the question of the integrity of our legislation within the province. But it's another example of the same situation.

4 p.m.

Mr. Attorney General, I raised with your deputy some time ago, having raised it—with the knowledge of the Minister of Consumer and Commercial Relations, your colleague, the Hon. Mr. Drea—with the then chairman of the Ontario Securities Commission, my concerns about the notice which appeared in the bulletin of the Ontario Securities Commission, dealing with the G. E. Kreber and Shane-Morgan Investments Limited matter.

I had expressed concerns which, very briefly stated, have been that for a long period of time I have been involved in the question of corporate behaviour and corporate responsibility and corporate sense of obligation of the senior management of companies and the role of the directors, as such. I was, therefore, surprised to find that without any disclosure by Mr. Kreber as president of Consumers' Gas Company, during his presidency he received fees aggregating \$365,000 from Shane-Morgan Investments Limited with which company he had an association.

I know the bulletin of the securities commission published a very carefully phrased statement. I also know the statement was shown to the solicitors for Mr. Kreber and they, as I understand it, made no comment on it. I do not accept the position that because no consumer suffered a loss, in the strange world of equating dollars for services it was decided they had received value for their services. I suppose this is trite in elementary law, but I was concerned that nothing in our corporation law or our securities law and, the final step, nothing in the

code, after all these years, dealt with that kind of failure of what to me is a fiduciary obligation in a fiduciary relationship the president of a company has with his company.

In your absence from the country at the time, I raised it with your deputy because the file had been transmitted to your office by your colleague and I believe you have had an opportunity to consider it. If you are prepared to make some statement or comment in connection with it I would appreciate it. If not, perhaps later on in these estimates you could do so. I raise it at this point not only because I do not want to wait for the other estimates to come up but because it is a matter very appropriate to your concerns. Also I raise it on the first vote because I think it speaks to a very significant and important matter. I would appreciate your reflections or thoughts about the concern I express.

**Hon. Mr. McMurtry:** I can answer at least in a preliminary fashion at this point, Mr. Renwick. The Deputy Attorney General did communicate your concerns to me and he also satisfied himself that the matter had been carefully reviewed by senior law officers of the crown with respect to whether or not any criminal offence had been committed. I assume the section they were interested in was the section you have alluded to dealing with secret commissions under the Criminal Code.

I have some material in front of me; I haven't looked at it for a while.

I might say the review of it was done on the basis of facts as you have stated, that during the period he was president payments totalling \$365,000 were made by Shane-Morgan to Kreber. It is the view of the law officers of the crown to register a conviction against Mr. Kreber it would have to be proved beyond a reasonable doubt that the payments to Mr. Kreber were consideration given to him for his having caused the Consumers' Gas Company to make the payments to Shane-Morgan. While obviously the situation was disturbing, I gather there was evidence to suggest there was no such nexus in so far as that issue of consideration is concerned. I would be interested in your views on the law in that respect.

Any breach of the Securities Act, I gather, was reviewed by counsel for the securities commission. Our counsel spoke to the counsel for the securities commission and they, apparently, were of the opinion that no breach of that act was committed.

As you know, counsel for the securities commission are the only group of counsel under the general umbrella of the government who don't come under the aegis of the Ministry of the Attorney General. Basically, our review of the matter was with respect to whether or not the secret commission section of the Criminal Code had been breached. I'm advised it was reviewed by several senior members of the ministry. The conclusion was criminal prosecution was not warranted.

Does the Deputy Attorney General want to add anything to what I have said?

**Mr. Leal:** I think not, Mr. Minister. Mr. John Takach, director of crown attorneys, was in charge of this review. Perhaps he has something to add. I would just stress that the second ground of Mr. Renwick's concern, as I understood him, was that even if a charge was not warranted under the Criminal Code, we ought to review whether a charge could be laid either under the Securities Act or the Corporations Act.

The reference to the material indicates we did check that through with counsel for the securities commission, more particularly with regard to section 124, I think it is. They were of the opinion that there was no ground for them conducting a prosecution for an offence under that section.

I'm not sure that leaves the thing in a particularly satisfactory stage for Mr. Renwick, but that's the extent to which we have been able to pursue it.

4:10 p.m.

**Mr. Renwick:** I recognize that, and I appreciate it; not in the thank-you sense but in the understanding sense. I recognize and accept that under the code the decision is there. I am not talking about trying to second-guess the decision of the law officers of the crown on that question. I have a couple of concerns about it that remain in my mind, which are, again, not disputing whether action could or could not have been taken under the Business Corporations Act or under the Securities Act.

I think the commission was put in an invidious position in having to decide on the matter. They were obviously advised that no breach of the Securities Act had occurred because of this event or, presumably, no breach of whatever appropriate corporate law was concerned with the matter. They then had to make a decision. I certainly would have liked to have been in the closet listening to the discussion of the board, and whether they then said nothing, or said something with no legal occasion to make it. They certainly appear to have felt strongly enough

about it that on balance they decided they had to say something. They couldn't just say nothing, because of the failure to comply with the sense of the commission about the standard of behaviour expected of corporate officers of publicly-traded companies. Therefore, they made their statement, and I feel that was the right course.

The interesting thing is that one has to search the Securities Act quite a long way to get the kind of support that would authorize them to take that kind of position. Perhaps your officers, in conjunction with the securities commission staff, would look at the question of whether in the particular circumstances of the case there should be some kind of an amendment to the Securities Act so it would have a clear obligation to comment on this kind of failure to conform to a particular standard of corporate behaviour. That's one of my concerns, because the commission is of high standing and repute, as are its staff. Therefore, they must have been exercised by this standard of behaviour.

The other side of it seems to me to be much more serious in that Mr. Kreber is a skilled corporate lawyer and a man of wide business experience in the positions he has held as president of George Weston Limited and president of Consumers' Gas Company. That kind of world is in the public forum.

It is a well-known fact that the courts will not intervene except in extreme cases, to equate the dollar consideration paid for services; that is, to determine whether or not the services are equal to the value of the dollars paid. The courts can't equate dollar value to that kind of service matter. I suppose it is trite to say it is rudimentary to know that in contractual corporate law one can't get a court to intervene except in a case of an unconscionable nature. At least, that is my understanding of the matter.

If one is disposed to use this route, it seems to me that one of the obvious things that should be done is that you as Attorney General, having the overall responsibility for the laws of the province should, in conjunction with your colleagues, look very closely at the question of whether the corporate law in such situations should require an automatic payback of the moneys, whether or not value has been received. In other words, if there has been a failure by a top executive member of the board of a public company to disclose in a fiduciary relationship his interest in a particular arrangement, however remote, there should be the penalty of immediate reimbursement to the company.

**Mr. Leal:** I should say, Mr. Renwick, if I may, that it will be obvious to you we did not get into what action might or might not be taken on the advice of counsel by Consumers' Gas against Kreber for an alleged breach of his fiduciary—

**Mr. Renwick:** I understand that. That was pointed out.

**Mr. Leal:** We did not regard that as being our province.

**Mr. Renwick:** Right. That was exactly the point I was coming to. I recognized the board of Consumers' Gas may have taken advice as to whether the dollars were recoverable in such circumstances. If the board, for whatever reasons, did not take that view, I am not asking that any comment or investigation be made about that. In the strange world of corporate law, if the company has been harmed and the board has failed to take the action, presumably a shareholder of the company could bring an action in the name of the company to recover the funds. I am very rusty on that.

**Mr. Leal:** We are told that is being considered. Whether that is true or not, I do not know.

**Mr. Renwick:** But I think all of that intricate formality of legal proceeding and the fine distinctions that are made do not satisfy the kind of direct requirement we should be imposing on directors of companies. We should remove the temptation, cut out the route to that kind of arrangement so it is not going to work any more—

**Mr. Leal:** So there is no benefit to be gained.

**Mr. Renwick:** —so there is no benefit to be gained, because if you do gain it, you are not going to be able simply to resign and keep the money; you are going to have to give it back.

I sat on our corporate law committee which worried about defining the duties and responsibilities of directors. We fussed about how to word the definition so as not to scare everyone off the boards, from all the directorships and all of the rest of it; although, of course, that never materialized as a real threat. But we have here a significant failure to meet a standard of behaviour which seems to me to be elementary. Yet there is nothing in our law that says, as a matter of public policy, that this is not acceptable. We treat it as if it were a matter of civil dispute and leave it to the intricacy of representative actions and all of that kind of thing.



Therefore, if you share my fundamental concern I would appreciate it if your office would study the circumstances and the background to see if this problem could be dealt with in our corporate law, and then in our securities law to deal with the area of publicly-held securities and securities distributed on our markets. If necessary, the code could be amended to reinforce our determination that no one fool around with this kind of standard, particularly among the leaders of the business community, with all of the experience and expertise they have at their call. They understand it well.

4:20 p.m.

**Mr. Leal:** The Attorney General has just asked us to do it, Mr. Renwick, and we are glad to comply. May I know, just to clarify the point of reference, Mr. Attorney General, what sort of forum Mr. Renwick has in mind for the inquiry which would trigger the automatic payback? You must have somebody in a decisional process somewhere saying, "Yes, these are the facts, therefore pay it back."

**Mr. Renwick:** I think you impose the obligation on the board of directors. Politics sometimes is linear, and I am kind of linear about this issue. It seems to me you go to the heart—direct to the board. What made me wonder what it was all about was an announcement quite some time ago, that there had been a disagreement between the chief executive officer of the company and the board. The circumstances were unresolved and he had resigned. That was it; and it was all very polite.

**Hon. Mr. McMurtry:** I think the points made by Mr. Renwick are pertinent in so far as the role of the Ministry of the Attorney General is concerned, notwithstanding the fact that we do not have the responsibility of administering the particular acts. We certainly will pursue it actively, as the Deputy Attorney General has stated. It may be that, in the not-too-distant future there will be an amendment. I do not know whether it will be known as the Kreber amendment or the Renwick amendment.

**Mr. Renwick:** I assume you are not going to have a jurisdictional problem. I am quite certain the chief officers and counsel of the Ontario Securities Commission will be equally interested in bringing about a reinforcement of what we have always thought to be the acceptable standard of behaviour.

Let me say it is at least doubtful that Mr. Kreber would have received \$365,000 if he had disclosed his interest to the board of the company of which he was the president. They

may have said, quite legitimately, on a proper disclosure: "Yes. That's all right, sir. We approve. We want the services that Shane-Morgan Investments Limited can give us. We need them. It is fortunate for us that our president has the connection, and if he benefits, fine. That's quite all right." I just happen to think it would have been somewhat more difficult.

I appreciate what you are going to do. Perhaps in due course you might let me know the result. I know these things take time, and I am not suggesting that they are not difficult. It may be that you will want to consult, not only internally but with counsel versed in corporate affairs outside, as to how best to deal with the problem.

**Mr. Chairman:** Further questions, Mr. Renwick?

**Mr. Renwick:** I believe the only other matter I have is one I do not want to raise at the moment. I am not prepared, and there is probably a more appropriate way to raise it. Perhaps if I could leave this with your deputy, at some point later on in these estimates you could comment about it. It is the conflict of interest problem that Trustee Spencer ran into with the Toronto board of education. Certain situations also arose before the Hamilton Board of Education.

Mr. Spencer very kindly sent on to me this memorandum which went to the association of large school boards in Ontario, dated January 4, 1980, regarding conflict of interest generally. I wonder whether it isn't time for us to take a look at this problem. If there is an appropriate time during the estimates perhaps you could refer to it or have somebody refer to it.

**Hon. Mr. McMurtry:** The issue of municipal conflict of interest has been of great interest to municipalities generally. A working committee has been in operation for many months as part of the Provincial-Municipal Liaison Committee structure, and we are getting fairly close to some recommendations to cabinet. I think what we have learned through that may assist us in this matter as well, Mr. Renwick.

**Mr. Renwick:** I found it a sort of conceptual conundrum, because we had just finished going through the family law business of trying to separate the independent personalities of husband and wife and so on. Then Trustee Spencer gets hit because his wife is a teacher employed by the secondary school board. The matter before the board at the time, I believe, was the collective agreement related to the elementary schools. There was some internal practice by which what was

settled in the elementary schools would also be settled in the secondary schools, and he didn't disclose to the board the fact his wife was a teacher. He was held to have placed himself in the situation of voting in a remote pecuniary interest to himself.

**Mr. Leal:** It's a very tough problem, and it also exists in the university area. Many universities, including my own until recently, had a rule they would not have a husband and wife team on the faculty. That was thought to be justified because of the Spencer type of situation. A husband might be serving on a committee voting salaries, including his wife's, and someone might make a derogatory remark about her performance, not knowing that her husband was in the room. In that situation, believe me, you've got an enemy for life!

Some universities go even further than that, as you are well aware, and prevent any familial relation at all, including father and son. For example, a man named MacIntyre was in the faculty of law at the University of British Columbia, and the son couldn't go there until his father died. So it's a much broader thing, and I don't know—

**Mr. Renwick:** I don't either. My own reaction is that fundamental approach in this day and age is reversed by the change in attitude. There shouldn't be any exclusionary rule as to what kind of institution can or cannot employ people because of this kind of family connection.

The army, strangely enough, had the opposite rule; an older brother could bring a younger brother into the same regiment. This always seemed to me to be a strange operation, because you multiplied their chances of getting killed at the same time, which has happened on a number of occasions. It would seem to be a strange military rule.

**Mr. Leal:** I suppose it is based on the buddy system. If you want to have a buddy, your brother is as good as you can get.

**Mrs. Campbell:** Not today; not necessarily.

**Mr. Renwick:** I must be getting older. That's the second time today I have alluded to my military experience by way of illustration. I must stop it.

4:30 p.m.

**Mr. Lawlor:** On item 4, on the law reform commission, we have received magnificent documents with respect to the sale of goods. I am wondering if the Attorney General can give us any indication of when he might be bringing forward the draft or the amendment legislation, as you see fit, to that report.

**Hon. Mr. McMurtry:** First we would be dealing with Consumer and Commercial Relations to a large extent. I can't speculate as to when that might be.

**Mr. Leal:** I think an important thing which we discussed yesterday in response to the question from Mrs. Campbell is that it has, Mr. Lawlor, been referred to a special committee of the Uniform Law Conference of Canada. They have had at least four meetings and they are presenting an interim report of that committee to the executive of the Uniform Law Conference which will be meeting on Saturday of this week.

The reason that was done is, if there is to be a substantial change in the sales law, it probably is a real plus to have it uniform across Canada or, to put it in more crass terms, we're peddling it to the other provinces at the moment.

**Mrs. Campbell:** That shouldn't be in Hansard, may I suggest.

**Mr. Leal:** There's one good way to lose it.

**Mrs. Campbell:** Exactly.

**Hon. Mr. McMurtry:** I think in the past most provinces have been open to admit they have benefited to a large extent by the efforts of the Legislature of this province with respect to many areas of legislation.

**Mr. Leal:** Particularly in the Atlantic provinces.

**Mrs. Campbell:** Have they expressed any opinion about the law of trespass or law of occupiers liability?

Items 1 to 5, inclusive, agreed to.

Vote 1401 agreed to.

**Mrs. Campbell:** Always with the note that the Attorney General stated for the benefit of the Liberal Party there had been no polls taken and there was no money in the estimates for polls this year. It was for the benefit of my colleague the question was raised.

**Mr. Chairman:** We have now spent \$3,510,420 and in the next vote we deal with some \$37 million.

**Hon. Mr. McMurtry:** I was afraid we would be criticized when there were no polls because we weren't consulting with the people of Ontario, that perhaps the fact we don't have any money or don't take any polls might cause it to be argued we're not prepared to consult to the extent we should.

**Mrs. Campbell:** My point was not that you shouldn't have polls if you feel it is important, but that we should know what the polls are about and we should have the results of them shared in view of the public expenditure.

On vote 1402, administrative services program:

Mr. Lawlor: Main office; we have said a great deal about legal aid and I am not going to say much. I have one question. What is the federal contribution this year?

Hon. Mr. McMurtry: I think it's close to \$8 million, isn't it?

Mr. Leal: It is \$8.7 million.

Mr. Lawlor: You never disclosed that amount.

Hon. Mr. McMurtry: It was the result of very hard bargaining at federal and provincial meetings.

Mr. Lawlor: That's all part of the \$31.2 million we have in front of us?

Hon. Mr. McMurtry: Yes.

Mr. Lawlor: So you take that away from your \$31 million and you are actually, in effect, contributing less to legal aid.

I gave you some commendation about the briefs in your budget the other day. I want to make a gross exception. You are not keeping pace. When they submitted the \$34 million to you, you could have done that easily and remained pretty well within the parameters of last year.

Hon. Mr. McMurtry: We are always looking for more money for legal aid.

Mrs. Campbell: More money or more credit, I keep wondering that.

Hon. Mr. McMurtry: I don't get much credit, I can tell you that.

Mrs. Campbell: I didn't mean credit in that sense. I meant in the financial sense.

Hon. Mr. McMurtry: I see.

Mr. Lawlor: Just one final comment. You are perfectly cognizant of that. That is not particularly disclosed in the papers in front of us. It's a hidden bonus you enjoy. Next year as you set up your legal-aid budget give more proper cognizance to that substantial increase of funds. Last year, I remember it was \$5.8 million or \$6 million and now it's \$8 million-plus. There is a lot of money from the federal government you can very well take into account in your own internal adjustment and be more accommodating to the plan itself.

Mr. Leal: Mr. Chairman, I don't address this to Mr. Lawlor's point but perhaps for the benefit of the honourable members I would point out at this stage that literally the last page of your materials—page 102—sets out revenues and the government of Canada reimbursement of expenditures on legal aid is there indicated for 1978-79, 1979-80 and 1980-81. The fact it's on the

last page I suppose proves your point; not much publicity is given to it—

Mr. Lawlor: You've set forth fairly elaborate figures with respect to income revenues, the turnover and that whole matter. I searched in vain for the figures. Okay, I see it's on the back page. I will start at the back next time, like a Chinese mandarin.

Mrs. Campbell: With the obituaries.

Mr. Bradley: In regard to legal aid, the question I addressed to the minister in the House today concerning the provision of up to \$40,000 to the Preservation of Agricultural Land Society—by the way, I happen to be one of the few politicians in the Niagara Peninsula who agrees with the position of the Preservation of Agricultural Land Society. I don't particularly object to the grant to them. I'm wondering though whether this is breaking new ground in providing assistance to a group of this nature and whether you anticipate this kind of financial assistance would be given to other groups that would be appearing before Ontario Municipal Board hearings. One can look, for instance, at people in a subdivision who might object to a plan a municipality is bringing forward.

To your knowledge, is there any movement in this direction?

Hon. Mr. McMurtry: As I understand it the legal-aid plan is provided as a mechanism where the circumstances have been particularly—I don't know what the right word is; I was going to say special, so funding may be provided through the plan. That's basically the decision, as I understand it, of the Ontario Legal Aid Plan. But Mr. Campbell is with me now and he is more knowledgeable than I am in the day-to-day administration of the overall structure. He might be able to assist you.

Mr. A. Campbell: I understand the grant was made on the basis of a certificate issued on the recommendation of a special subcommittee of the legal-aid plan that looks into matters such as group certificates and when they should be issued.

4:40 p.m.

I understand group certificates of this nature are very rarely issued. The only one I know of was issued in the early 1970s in respect of a group in Toronto that was concerned about zoning applications in the Grange area of Toronto. So they are very rare. A special subcommittee of the legal-aid plan looks at each application on its merit. I'm unaware of any general movement towards granting more certificates in this area.



It's a special power that is exercised extremely rarely.

We are having some information sent up now from the legal aid plan. It's not here yet but we may be able to have more information later on this afternoon. We will certainly have more—if we don't have it this afternoon—by the time this committee next meets and we can provide you with information about who is on the special committee and what criteria they use.

**Mr. Bradley:** Yes, I would be interested in both of those pieces of information, particularly the criteria used, because in the House the Minister of the Environment (Mr. Parrott) has been confronted many times with the question of possible funding for those who are opposed to certain projects that the individuals or group feel would be adverse to the best interests of the environment of Ontario. I'm wondering now whether the legal-aid plan is going to become involved in this kind of financing. A lot of people would look forward to it if, indeed, that were the case.

**Mr. A. Campbell:** Considering their budget I doubt if they would be getting into it in a very large way. One thing I understand they look at very carefully is the question of financial eligibility. I think their criteria are based on a proposition that all or almost all the members of the group have to be people who would be financially eligible for legal aid if they were applying as individuals. But that's one of the points on which we can get more information. I understand they exercise a good deal of scrutiny with respect to financial eligibility when they have a group certificate. That's always one of the main problems whenever the question of group certificates is being considered, how you make sure all the members of the group or all the people having that interest are people who would otherwise be receiving legal aid.

**Mr. Bradley:** Knowing this particular group—it depends whose name would be on the application—I would wonder whether a university professor would qualify for legal aid.

**Mr. Leal:** They would in my day.

**Mr. Bradley:** In 1980 I wonder whether that would be the case. I would be interested in those criteria.

The question I asked of the minister was really, I suppose, related to some other form of assistance. I recognize the municipalities would hardly qualify for legal aid but I think they feel there is some kind of balance re-

quired in the funding you are providing. Maybe at a future vote we might even discuss—I recognize there is no easy answer—avoiding the situation where we have to have costly hearings of this nature. I don't know whether we can.

I realize there is a necessity for hearings and so on, but the real problem, as far as the municipality is concerned, is the amount of money being spent on planning consultants and lawyers. These hearings which have dragged on at great length are almost a paradise for lawyers and planning consultants. But I will leave that kind of matter to my colleague from Brantford-Oxford-Norfolk (Mr. Nixon) to pursue.

**Hon. Mr. McMurtry:** As you know, the Minister of Intergovernmental Affairs (Mr. Wells) is interested in finding alternative methods of resolving these issues and you've mentioned the member for Brant-Oxford-Norfolk. I am reminded there is quite a successful process conducted in relation to an annexation matter that has avoided what would have been a very long, costly proceeding. It is hoped that will be the wave of the future in so far as some of these issues are concerned—issues of annexation and related issues can be very expensive and we are concerned about that.

**Mr. Chairman:** One of the problems with your criteria for group actions or assistance through legal aid as they now stand is they virtually exclude, as I see it, constitutional testing by any group because constitutional questions usually will fall across class lines rather than within them. Therefore, even though the poor may be affected by a constitutional question, or feel their constitutional rights are violated, they cannot receive assistance through legal aid to test the constitutional question because there will be a great number of other people of higher social economic class than they who may have those same constitutional rights violated.

I am thinking, for example, of the most recent case, the case of the Etobicoke condominium association, that cuts across class lines. There are some very poor people who have managed to scrape up a \$1,000 down payment to buy a condominium. There are also people in the borough of Etobicoke who have bought condominiums for upwards of \$150,000. Yet with that constitutional question, the money has to be raised clean across the board from people of all social and economic groups, even though the poor are equally affected as the rich.

**Mr. A. Campbell:** When one is talking about a constitutional challenge the question

of test-case litigation doesn't necessarily arise in the context of a group certificate. Very often the constitutional issues are capable of being raised in an individual case, whether or not somebody is legally aided. One doesn't need to have a group action to get a constitutional test case, but I'll check to see the extent to which those criteria are used.

**Mr. Chairman:** In this case, are you suggesting that if I could have found some individual who would normally meet the criteria in any other type of case, he could actually have raised the money through legal aid, now I understand we have been able to raise in the vicinity of \$20,000 to test the constitutionality of the levy section of the Condominium Act—section 30, is it? Might they actually have received that assistance? That interests me. I haven't seen it done by anyone in this kind of question.

**Mr. A. Campbell:** I am not familiar enough with that litigation to know whether it would apply in that case. Certainly in criminal matters, in quasi-criminal matters, constitutional questions are raised. They are not raised every day on legal-aid certificates, but a great number of important constitutional cases have come up in relation to an accused person granted legal aid. One of the biggest test cases under the old Landlord and Tenant Act involved Pajelle Investments and the West Lodge apartments out in the west end where a test case went to the Supreme Court of Canada from one of the legal-aid clinics.

There is more than one way to get a test case before the courts, on either a constitutional issue or an issue of statutory interpretation. There are many ways other than group certificates. I don't know enough about the litigation you mentioned to give you an opinion on that.

**Mr. Chairman:** It strikes me that legal aid is the wrong route to go. Surely, when a substantial number of people feel their constitutional rights are violated, there should be a fund in the Attorney General's office that says the Attorney General has the obligation to test that case and pay for the testing.

**Mr. A. Campbell:** The difficulty would be that it shouldn't be in the gift of the Attorney General to decide whether or not an individual gets legal representation. The whole purpose of the legal-aid plan is to ensure that public funds, which are dedicated to the purpose of representing individuals or groups, are managed by a body that is independent of the Attorney General.

In most constitutional cases the Attorney General would be represented and I think it

would be wrong to have the Attorney General deciding whether his opponent or potential opponent in court would or would not get funded, or funded to a certain amount.

4:50 p.m.

**Mr. Leal:** It ought to be added that although we don't have any fund earmarked in the ministry, we do have a scheme, as you are well aware, such as the reference involving the residential tenancies legislation where the Ministry of the Attorney General was asked to pick up the tab—and we were glad to do it—for the most senior counsel in town to attack the legislation, joined by counsel for tenants' associations, et cetera. That was a case where our ministry picked up the substantial legal tab to pay counsel on the other side. Perhaps that's in the pot.

**Mr. Chairman:** Perhaps the minister then will consider picking up Mr. Robinette's and Mr. Millman's bills for the Etobicoke condominium association.

**Mr. Kerr:** The constitution will become very popular if we broaden whatever criteria you have now for assisting public bodies or groups to appear before committees or boards, or what have you, to combat or submit points of view. I think it would be the biggest item in the Attorney General's budget if we didn't stick to the criteria using the legal-aid plan and the legal-aid qualification formula you have now.

**Mrs. Campbell:** I have a couple of comments. The thing that bothers me, and I have raised it in the House, is a case where a group of residents in my riding went to the Ontario Municipal Board on the same side as the city. Their bill at that time was something like \$23,000. Because of the intervention of the cabinet in its appeal position, that went back to the Ontario Municipal Board. No costs were provided to that group and they had to face an additional \$25,000. I am not stating that is a case for legal aid particularly, but I am stating those people should have been reimbursed. There should be some way of reimbursing those people at least for their first time, when they were successful. Legal aid itself, is probably not the answer in that kind of case, but there should be some fund.

I can recall the former chairman of the OMB did make orders allowing some costs to people. That seems to have been stopped by the new chairman or the new OMB people. That is a very serious problem and I don't think it should go on. The Attorney General, as a matter of justice, might have some discussion with his colleagues to see

whether, in these cases, there shouldn't be some provision for the ratepayer or resident groups in these planning matters.

In this area there would be a great many people whose contribution to that fund would be rather low, if anything, and others, therefore, had to pick up a disproportionate amount. I don't think it is appropriate that people should be placed in that position.

**Hon. Mr. McMurtry:** As I recall the legislation under which the OMB operates and which you have already touched upon, Mrs. Campbell, it does have quite wide discretion with respect to awarding costs.

**Mrs. Campbell:** But it seems there is a change in the ministry or something about these things because the whole philosophy changed when the former minister left.

**Hon. Mr. McMurtry:** It may be a change of attitude within the board itself. Certainly it is nothing—

**Mrs. Campbell:** Except that, for a time, we had the new chairman who had come from the ministry, as I recall.

**Hon. Mr. McMurtry:** Do you mean Mr. Palmer?

**Mrs. Campbell:** Yes. I am not suggesting there any overt—

**Hon. Mr. McMurtry:** Not our ministry.

**Mrs. Campbell:** No, not from you. There is nothing overt in this, but it left questions in the minds of those who suffered.

The other question is, has Mr. Campbell by now resolved the problem of my little man who was denied his legal aid? I know he was contemplating a lot of legwork, but I have asked it three years in a row. It is no fault of Mr. Campbell's. I really gave him all the details only this year.

**Mr. A. Campbell:** We tracked down part of it. We are still trying to track down the other part. I gather a straight mistake was made as to the reason for refusing legal aid. The refusal to Mr. Yonar specified he was being refused because he had private insurance coverage.

**Mrs. Campbell:** That's right.

**Mr. A. Campbell:** That was inaccurate. He did not have private insurance coverage and he had to fall back on the fund. The problem may be that, even if he had specified what the situation was, he might not have received legal aid because the interest was covered by the fund.

I have not tracked down the fund end of things. I have, I think, provided you with the general rule followed in the legal-aid office—

**Mrs. Campbell:** Yes, you have.

**Mr. A. Campbell:** —which is that if the claim being made is one the legal-aid people think will be paid by the fund, they would refer the applicant to the fund. However, the applicant would be advised that if he is not satisfied with the way the fund is handling it, he should go back to the legal-aid plan.

Generally speaking, the fund covers payments of any kind to be made against the applicant as long as it is not covered by insurance. Mr. Yonar did not have insurance.

There are a number of situations where there is an insurance policy. I have an example over the signature of Mr. Donkin, as he then was. It is a standard format: "You have applied for legal aid in a case arising from a motor vehicle accident. We are initially refusing your application because the motor vehicle accident claims fund may be available for the disposition. To contact the fund. . ." It goes on to explain carefully what the respective options to the person are. It finishes up, "If you seriously dispute the fact that you are at fault in this accident, or if you seriously dispute the amount of the damages that the other side is claiming, or if you have a claim of your own which you wish to make against the other driver, you should fill out the enclosed form and return it to this office."

In this case a mistake was made, I assume because of the language problem. If Mr. Yonar or someone who was helping him had looked at that refusal, had seen the reason for the refusal was inaccurate, he could have automatically appealed in relation to that refusal.

In my experience, those appeals are a very easy process to go through. The area committee on appeals from eligibility decisions sits in the evening. It is a relaxed, informal atmosphere. One just goes in and says why one disagrees. In my experience, the area committees are very understanding of the human aspects of people's concerns about having been refused.

It is unfortunate there was a language problem and no one who was helping him at that time twigged to the mistake. However, even if the true facts had been known, there perhaps still would not have been legal aid available because of no dispute with the fund. We are tracking down that aspect with the fund and going through the material with which you provided us.

5 p.m.

**Mrs. Campbell:** I appreciate that because to me there is an obvious gap. I have been



saying that. The difficulty is that the person does not become aware of dissatisfaction with the way the counsel for the fund is handling the matter until it is all over.

He does not speak English well. He can carry on an elementary conversation, but not for getting involved in this. His employer tried to help him. The employer at all times stated he was turned down because there was a counsel acting on behalf of the fund. They were both of the opinion that meant his interests were protected. Suddenly, it's game over.

Then he came to me and said: "It wasn't my fault. I tried to get legal aid." He said this to his employer. I then spoke to Mr. McMurtry, who was the counsel for the fund, and he said he had nothing to do with this aspect. A settlement was arrived at.

I am not disputing that Mr. McMurtry was at fault. I think it's the system that is really at fault in these cases.

I wish you would try to resolve it because there may be others who are in the same position. I do not know why they automatically turn them down because the fund is involved, because the fund apparently is not interested in what they have to say about the accident.

**Mr. A. Campbell:** The applicants are told specifically that if they seriously dispute the fact they are at fault, or the amount of the damages the other side is claiming or if they have a claim, they should fill out the enclosed form and return it to the office.

**Mrs. Campbell:** In how many languages does that letter go out?

**Mr. A. Campbell:** I don't know. The one I have here is in English. In my experience the fund is pretty sensitive about language issues. Their general-information pamphlets are in 10 languages. They have employees who speak a number of languages. They have interpreters on call, as I understand it. They really take the language issue seriously.

Regrettably, a mistake was made in this case. It is unfortunate that whoever was assisting Mr. Yonar—his friend or employer, whoever it was—did not take the appropriate steps on seeing the reference to private insurance.

**Mrs. Campbell:** There might be others who do not have a sympathetic employer and would be worse off. It seems to me there are two problems: One, the language problem; and two, the legalese that may be simple to us but may not get through to people what is actually being said. When anyone suggests if one is not satisfied with the way in which the fund counsel is func-

tioning—and one does not know until a settlement has been arrived at—it is a little late in the game, I suggest, to express dissatisfaction. I do not know what anybody can do. Here's a man who still maintains he was totally in the right in this thing and he gets an assessment of \$7,000. He's just wiped out as far as he is concerned. I haven't heard whether he is able to continue in his job, because he needed his car for his job.

I think a mistake was made. I would hope that in looking at this, if there is any way we can be of assistance, and if we could look at the attitude of legal aid in the fund cases—perhaps there are others who have been caught in the same bind—we could move to tighten this gap and try to work out something which means legal aid is operating at its highest and best for these people.

**Hon. Mr. McMurtry:** One of the interesting questions—and I don't know what the answer was or to what extent it is being considered by the legal-aid plan—is now that we have a system of compulsory automobile insurance I would be interested to know what the policy will be with respect to defending people against whom a claim is being made who simply disregard the provisions of the law in that respect.

**Mrs. Campbell:** It's an interesting question. In this case, it was not disregarding the law.

**Hon. Mr. McMurtry:** No, I appreciate that. If we're talking about what could be done in future, that is a question that just occurred to me. The issue is that right now the legal-aid plan does provide a mechanism whereby it will provide lawyers for an insured motorist, notwithstanding the availability of the fund lawyers. What I am curious about is what the policy will be when someone disregards the compulsory automobile insurance provisions, is involved in an accident, is sued and does not have any insurance. In those circumstances, my initial reaction is not totally sympathetic to the fund representing them.

**Mrs. Campbell:** As long as they are made aware. We pass legislation here and think everybody knows about it. Ignorance of the law is no excuse, but I would venture to say in this day and age there are a lot of lawyers who are quite ignorant of the law. We pass so much every session that no one could keep up with it. I would suggest that before we become unsympathetic we do our best to let everybody know what the consequences may be. I think I would then share some of your concerns.

I trust I may get the full answer and I am most appreciative of your efforts. I know it's putting you to a lot of trouble.

**Mr. A. Campbell:** That's what we're here for.

**Mr. Warner:** Mr. Chairman, I see once again we are overwhelmed with a crowd and members who wish to participate.

You will recall—perhaps not the present chairman but others will recall—that yesterday we were discussing the situation regarding the system of justice in the province and the differences of opinion which exist between this minister and the Provincial Secretariat for Justice policy. Various descriptions were applied to the system.

I said I felt increasingly that what we had on our hands was a mess. Others described it as more of a muddle but none the less, I guess all of us agreed there were some problems, that it was not functioning properly. I think the other members of the committee might come around more to my suspicions now that I have been happy to share with other members of the committee the answers to the questions which I placed on the Order Paper on April 14, 1980.

The message through the two pages is to the effect that, "We don't keep statistics, we really don't know what's going on in the system." Do you not keep any—  
5:10 p.m.

**Hon. Mr. McMurtry:** If you want to read the answer into the record and then make editorial comment, that's fine, but it might be of assistance to the members of the committee if the answers were read into the record.

**Mrs. Campbell:** Could the question be read into the record?

**Hon. Mr. McMurtry:** The question and the answer.

**Mrs. Campbell:** I am not aware of the question so I would like to know it.

**Mr. Warner:** Verbatim, uninterrupted, by myself.

"121. Mr. Warner, inquiry of the ministry. Would the Attorney General advise:

"(1) In 1979, of those people who were granted bail how many pleaded guilty? Of those who were refused bail or were unable to meet the bail requirement, how many pleaded guilty?

"(2) In 1979 how many people were unable to meet the bail requirements?

"(3) Will the minister now draft a set of guidelines for the granting of bail? If not, why not? If yes, will the guidelines be public and subject to appeal?

"(4) Will the minister instruct the justices of the peace to provide a reason(s) each time a surety is rejected?

"(5) In 1979, how many people who were in jail awaiting trial, then acquitted or not jailed subsequently lost their jobs?

"(6) In 1979, how many people who were in jail awaiting trial were there because of police detainment orders?

"(7) In 1979, how many bail applications were there? How many were not granted?

"Tabled April 14, 1980.

"Answer 121: Hon. Mr. McMurtry: We do not keep any statistics on the number of people who are granted bail and who eventually plead guilty. Similarly, there are no statistics on those who are ordered detained or who are unable to meet the conditions set down by the justice and who eventually plead guilty.

"It is not clear what is meant by the phrase 'unable to meet bail requirements' but assuming that this question pertains to the conditions set by the justice in order that the accused be released, no statistics are in fact kept.

"It is not necessary to draft a set of guidelines for the granting of bail as in fact the rules with respect to release or detention of an accused are set out in the Criminal Code and the case law decided thereunder. The application of the guidelines and rules set out in the Criminal Code of course are subject to appeal.

"It would be as inappropriate for the Attorney General to issue directions to the justice of the peace with respect to providing reasons for rejecting a surety as it would be for the Attorney General to attempt to direct a judge that he must provide reasons for the exercise of his discretion. Naturally, from time to time, a justice in fact will supply reasons where the reason for rejecting a surety is in fact not obvious.

"No statistics are kept by this ministry with respect to people who are ordered detained or who cannot or choose not to meet the conditions of a release order and who are then acquitted or not jailed and who subsequently lose their jobs.

"As there is no order such as a police detainment order, it is difficult to comment on the question posed with respect to this so-called order. Any show-cause proceedings are in fact conducted by the crown or its representative and not because of any order by the police. Although initially the police may arrest an accused, the accused must be taken before a justice in short order so that an interim release hearing may be held.

"In 1978-79 there were 28,548 bail hearings. Not all of the bail hearings were in fact contested. Approximately 7,000 individuals were denied bail at some point in the proceeding. It is understood the Ministry of Correctional Services does not keep statistics on any of the foregoing."

End of answer. I did not interrupt myself, Mr. Chairman.

The editorial aspect of it is several-fold. The general impression I get from the admissions of not keeping statistics in certain matters is that it must be very difficult for you to really totally understand what is going on in the system. A case in point: You tell me that there were precisely 28,548 bail hearings; very nice. But then you tell me "approximately" 7,000 individuals were denied.

Maybe there is an explanation as to why you don't know the precise number. But if you know exactly how many hearings there were, surely you should be able to tell me how many were denied. That's one aspect.

The other aspect which is part of this ongoing feud or whatever you want to call it—disagreement between yourselves—

**Hon. Mr. McMurtry:** No, I should interject here that I am not aware at all of any disagreement between the two ministries, let alone the two ministers. That's your interpretation.

**Mr. Warner:** Oh, I'm sorry, Mr. Chairman, I withdraw—

**Hon. Mr. McMurtry:** I don't want my silence to be interpreted as—

**Mr. Warner:** On occasion it would be golden.

**Hon. Mr. McMurtry:** —your suggestion there is some disagreement between the two ministers, because I am not aware of any disagreement.

**Mr. Warner:** I withdraw my remark that there would be a disagreement between the two ministries. That may or may not exist. I would expect that it wouldn't, having the faith in the senior civil service that I do. Certainly, in this ministry they have done an admirable job of propping up the minister.

But between the two ministers there appears to be some considerable disagreement. Part of the comments in the House and outside were based on those reports which Mr. Walker tabled. In one of his answers to the leader of the Opposition he referred to two reports which had been tabled. I have gone through those reports and there are figures in there and there are statistics in there.

This comment says it's understood they do not keep statistics. I don't wish particularly to get embroiled in the middle of this—

**Hon. Mr. McMurtry:** Statistics with respect to the above questions.

**Mr. Warner:** In fact, there are figures—I haven't got the reports with me—regarding the bail hearings and how many were rejected and the reason. There is a little chart in there that shows the exact numbers. At any rate, the general impression certainly is that you don't seem to fully understand the state of the justice system.

**Hon. Mr. McMurtry:** I think I understand it about a hundred times better at the moment than you do, Mr. Warner.

**Mr. Warner:** That's entirely possible. That's part of the problem. I'm not in charge of the justice system, you are. It just seems to me—

**Mrs. Campbell:** You should know more.

**Mr. Warner:** —you are supposed to know more than me.

**Hon. Mr. McMurtry:** I agree with that and I do.

**Mr. Lawlor:** You damned well better.

**Mr. Warner:** The basic question that was raised through the Globe and Mail story was to the effect there were a certain number of people who were in jail needlessly.

**Hon. Mr. McMurtry:** I recommended to you the other day, David, and I again recommend it to you—it is unfortunate you were absent during the presentation of your very distinguished colleague, the member for Riverdale, who issued a general admonition about paying too much attention to that particular Globe and Mail story.

With the greatest respect you might benefit by what he had to say on that occasion. He expressed the view, as I recall, having seen the reports, that the tenor of the story at least was quite unjustified. His general admonishment was that members of the Legislature and members of the committee perhaps should be a little more vigilant about allowing our friends in the media, as well meaning as they may be, to direct or overly influence the course of our deliberations.

5:20 p.m.

**Mr. Warner:** Right, well—

**Hon. Mr. McMurtry:** So that's why I have some difficulty with your continual references to the Globe and Mail story as the basis for your concerns.

**Mr. Lawlor:** I think Mr. Renwick did say that in his opinion it was exaggerated and



somewhat distorted. Nevertheless, I think he agrees that the statistics, as presented to us, are unclear, to say the least.

**Mrs. Campbell:** Yes, they're confusing.

**Mr. Lawlor:** There seems to be some modicum, some—

**Hon. Mr. McMurtry:** He was critical of the reports.

**Mr. Lawlor:**—simulacrum of sense in the thing we would like to puzzle out and have greater clarification about. In my reading of those reports et cetera, that's precisely the position I'm in at the moment. I don't know what the hell they really mean and I think they should be subjected to give-and-take analysis.

I think you can do a great deal to straighten the whole thing out. He has drawn the wrong conclusions and has gone overboard with respect to the figures, nevertheless the reports that have been submitted to him could lead a fairly purblind fellow to certain conclusions.

**Mr. Warner:** The Attorney General may be right. Perhaps Mr. Walker shouldn't have been so extreme in his comments—

**Hon. Mr. McMurtry:** Why do you want to keep putting words into my mouth that have never existed?

**Mr. Warner:** It's his comments that led to the story.

Perhaps I could zero in on one aspect. I don't want to take up too much time on this at this time—

**Mr. Lawlor:** When the hell are we going to do it?

**Mr. Warner:** Yes. In 1978-79 there were 28,548 bail hearings and 7,000 were denied, so roughly one quarter, 25 per cent, were denied bail.

**The Acting Chairman (Mr. Kerr):** Do you think that's bad?

**Mr. Warner:** No, I'm not casting any judgement on it. From the Attorney General I would like his impression of how those figures should be interpreted.

**Hon. Mr. McMurtry:** That gets to the nub of the problem. That is we are dealing with individuals, not simply statistics. Statistics are always of interest to some people, but really if we had statistics to respond to all of the questions you asked they would not tell me very much at all. I would not be any wiser, with all due respect, Mr. Warner.

I have discussed this and maybe I have missed something in the equation—and I often do; I'm quite prepared to admit that. I'm very delighted I have such able people

to prop me up, as you suggest. I find the process of the estimates often enlightening.

Mr. Takach may want to add something but my view is that if we had the statistics, if you were able to keep the statistics so we could answer the questions as you put them, as I say, I don't think I would be any the wiser.

What we are really talking about is how each individual in the system is treated. We hope that through the process, starting first with the openness of the process, the fact accused individuals are virtually all represented by counsel, when the system breaks down the structure is such we are going to hear about it. That is the way I think it will always have to work. Regardless of what the numbers are, unless they were obviously out of whack I just don't think they tell us very much.

**Mr. Warner:** All right. The numbers we have here—we are looking at approximately 25 per cent. You must look at those numbers and figure in your own mind whether that is reasonable. Is that something to be concerned about?

**Hon. Mr. McMurtry:** Let me put it this way. If the figures of the bail applications—what was the number again?

**Mr. Warner:** Twenty-eight thousand bail hearings and 7,000 denied.

**Hon. Mr. McMurtry:** If 27,000 were denied that would be an extreme situation that would cause one to ask a few questions. But again it depends—if the statistics were so obviously out of whack they might well indicate the necessity of taking a closer look.

**Mr. Warner:** This isn't unreasonable, in past history or over the last so many years. No one should be unduly concerned about these figures. Is that what you are telling me?

**Hon. Mr. McMurtry:** Yes, they compare very favourably with the figures I have been familiar with over the years. Going back quite a few years—sometimes you lose track of whether it was 25 or even 15 years ago—I know the percentage of people kept in custody pending their trial used to be much higher, certainly in my early years of practice.

**Mr. Warner:** A bail problem such as the one Mrs. Campbell raised on Wednesday should then be taken to be an isolated situation.

**Mrs. Campbell:** No, surely that is not what he is saying. If I may—

**Mr. Warner:** Go ahead.

**Mrs. Campbell:** I agree on the question of statistical information because you are dealing with numbers of individual people with individual cases.

**Mr. Warner:** Agreed.

**Mrs. Campbell:** There are an awful lot of people in this province, a few too many people who get bail for certain offences. What bothers me a little bit in the answers to the question, is that the Attorney General makes an assumption and it's terribly difficult for an opposition critic to try to overcome that kind of assumption. The difficulty is that yesterday we debated whether the case I produced was an isolated case. I may be erring on the other side, as much as, with respect, I think the Attorney General is erring, when I say I do not believe that to be an isolated case. The problem is that we are both approaching the question with assumptions and the Attorney General has in his hands the opportunity to know what the correct assumption should be.

The Attorney General obviously must protect the system and the people involved in it. We all understand that. What bothers me is if what I indicated yesterday is treated as an isolated incident and the Attorney General has nothing to show us positively and specifically that his assumptions are correct. That is the nub of the problem.

**Hon. Mr. McMurtry:** I guess I am always uncomfortable with generalizations. We all are—

**Mrs. Campbell:** Yes.

**Hon. Mr. McMurtry:** —regardless of what side of the fence they fall on. I frankly don't want to sound overly protective of the system. I feel I have a responsibility to protect the people who are not here—

**Mrs. Campbell:** Precisely.

5:30 p.m.

**Hon. Mr. McMurtry:** —say the justices of the peace of the province, from generalizations that may be interpreted by them as wholesale criticism of the system. Sure, we have problems within the system on a day-to-day basis. There's no question about it. We have people within the system who don't always perform up to the standard which can be reasonably expected. It is always a great worry for us when that happens, particularly when one is dealing with the liberty of individuals.

We must of necessity rely on the openness of our system to bring to our attention individual cases, to give us the mechanism to express our concerns about the conduct of an individual or certain individuals within

the system. When I say to you, Mrs. Campbell, "Look, give me cases," I am afraid you have interpreted that as the Attorney General adopting a rather adversary stance, saying to you: "I don't accept it. Prove it." That's not really what I intend to convey to you.

When I ask members of the Legislature or of the public generally to bring specific cases to my attention I do it with a view to seeking their assistance. I mean this very sincerely because I know there are problem children, for example, within the system. Any system of administration of justice which purports to serve eight and a half million people would probably be somewhat other-worldly if it didn't have problem people.

When I invite specifics, it's to assist me through the process to find out where these problems are. When specifics are given in the estimates or in the Legislature it gives us an opportunity to strengthen the system. The role of critics is to criticize the areas of the system that can be improved. The role of criticism, generally, in any human operation is to make people throughout the system know that there is accountability and that they are not operating in secret or in private. If they don't perform pursuant to reasonable standards, someone is going to hear about it. It may be something that appears in the local press. It may end up with questions being asked of the Attorney General. The fact everyone knows this is the process, hopefully, of itself maintains a certain degree of discipline within the system.

I guess what I am trying to say is that we all know we are accountable. Anybody who doesn't think he is accountable has to be reminded of that. This whole process is to strengthen that accountability.

**Mrs. Campbell:** May I suggest that I am not immediately involved in this system as I sit here, yet we have tried to bring forward those who are working with the system on a daily basis. I find it a little trying that there seems to be no relationship between the ministry and those people who operate on a daily basis who can give these cases directly to the Attorney General, or to the deputy minister or to whomever else. They go a sort of circuitous route.

**Hon. Mr. McMurtry:** Mrs. Campbell, just what do you mean by that? We have people from the ministry—for example, the director of crown attorneys sitting here—who appear in the courts of this province on a relatively regular basis. Our senior people keep in contact with the system.

**Mrs. Campbell:** Does he attend all or any bail hearings? I presume the ones you attend are probably well done.

**Mr. Leal:** No. That's what he tells me.

**Mr. Takach:** The last time I appeared on a show-cause hearing was with your colleague, Mr. Stong, about 10 days ago, as a matter of fact.

**Hon. Mr. McMurtry:** Any system must have a certain openness. There is no way I can have people at 18 King Street East monitor what goes on in every JP's office. I know you are not suggesting that.

**Mrs. Campbell:** I am not suggesting that.

**Hon. Mr. McMurtry:** We must rely upon the profession particularly, and other people who have some contact with the system—quite apart from our own senior people—who stay in day-to-day involvement to let us know, to complain or otherwise about the situations that are of concern to us. This is what a democracy is all about in any area of government activity. We must of necessity rely on the citizenry and those who have some knowledge of the system to be fairly vigilant about what the hell is going on. Sure, we have to rely on that to a great extent.

**Mrs. Campbell:** You had a bail program set up by the Ministry of Correctional Services at city hall. There were to be meetings arranged between those functioning in that field on a daily basis and the ministry. I gave you the letter. My information is that those meetings were not set up. I would have thought those people would be the best evidence because they are there every day, as I understand, starting at three o'clock in the morning. There is no question they would be able to share their experience if there were not some assumptions which had been made. That is all I am saying.

Excuse me, Mr. Warner, I am sorry.

**Mr. Warner:** I will give the Attorney General the benefit of the doubt on what he just said. I tell you quite honestly that I have been burned several times around this place by other ministers. I bring with me a certain healthy scepticism. Whenever we raised policy problems with the Workmen's Compensation Board representative, the response inevitably was, "Give me the individual case where you have a problem and I will solve it." That is very nice for that individual. It does not do anything to improve the system. The system never got improved, no matter how many individual cases I brought forward.

The same thing occurs with the Ontario Housing Corporation ad nauseam, "Yes, we'll solve the individual case." That is nice, but

it is a policy problem. The same has happened with the Social Assistance Review Board.

When I, as an individual person, go through that experience a number of times and then come to this committee, I hope you appreciate that I am a little sceptical when I hear Mrs. Campbell raise the case she did and get back a response in which I thought—perhaps I misinterpreted and if I did I apologize—you seemed to be saying, "I will address that individual case." Good, I am pleased about that. But that is addressing it by itself and not looking at a policy problem or the way in which the system functions. Just solving the case is not good enough.

5:40 p.m.

I take you to be a man of integrity and the system, for the most part, is good. We all know that. There are a lot of jurisdictions in this world that have lousy systems with no justice. What we are looking for is to try to improve it wherever we can. I would be most happy to give you the benefit of the doubt.

When I read through the answers I am struck by what would appear to be the message that we do not keep many statistics. If you say, "Approximately 7,000 were denied bail," there could be 7,000 individual reasons and there probably were. Maybe just having the figures does not mean much but one has to start somewhere.

**Hon. Mr. McMurtry:** I suggest you come down and visit us again and we will show you just how many statistics we do keep.

**Mr. Warner:** All right. Fair enough.

**Hon. Mr. McMurtry:** I tell you, there are an awful lot of statistics kept within the Ministry of the Attorney General. There are people who argue that some individuals are overly preoccupied with statistics and keeping statistics, and that one misses the forest for the trees sometimes. I am not taking the position that statistics cannot be of importance and are not of assistance. Some of the questions you asked gave me some difficulty, yet I am willing to be persuaded that, apart from the hundreds of areas where we keep statistics, statistics in relation to these particular questions will help us improve the system. I am quite prepared to discuss this.

As I said at the beginning, I respect the efforts you have made to acquaint yourself with the system. Someone coming into the justice field who has not been part of it often brings a view, a freshness of approach that can be very helpful. I just want to reiterate that.



**Mr. Chairman:** Mr. Lawlor, did you have a supplementary on that or did you have another question?

**Mr. Lawlor:** I was going to make a brief statement.

**Mr. Chairman:** Your brief statement will have to be only two minutes.

**Mr. Lawlor:** It's not that brief.

**Mrs. Campbell:** You sound like the Premier.

**Mr. Warner:** I made an error in my question number six. I said, "In 1979 how many people who were in jail awaiting trial were there because of police-detainment orders." I guess I should not have used the word "orders," as you have pointed out. Perhaps if I had asked the question differently, I might have got a different response.

**Mr. Lawlor:** When you ask lawyers a question like that you have to be prepared for that.

**Mr. Warner:** Yes, I know. That's the lesson one learns. I sat down and wrote the questions myself instead of getting a lawyer to write them.

**Mrs. Campbell:** Sometimes you get farther that way, but not this time.

**Mr. Warner:** I missed that time. I will come back with the proper wording for the question on another occasion, but thank you for answering.

**Mr. Chairman:** I should take this opportunity to invite the Attorney General to come to the standing committee on resources development tonight, where we can compare his statistics with those of the minister, since that is part of the debate tonight.

We have a vote in the House on two private members' bills, so we stand adjourned until tomorrow after orders.

The committee adjourned at 5:44 p.m.

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### From the Ministry of the Attorney General:

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 Takach, J. D., Deputy Director of Criminal Law and Director of Crown Attorneys









No. J-7

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**

Friday, May 2, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, MAY 2, 1980

The committee met at 11:40 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

On vote 1402, administrative services; item 1, main office:

Mr. Chairman: I am going to recognize a quorum.

We are on vote 1402, item 1. We have seven hours and 44 minutes left in the Attorney General's estimates. I do not have a list from the last time so perhaps you can refresh my memory, Mr. Lawlor.

Mr. Lawlor: I was on for two minutes.

Mr. Chairman: As I recall, you had a short statement to make and you agreed you didn't have time to make that long a short statement.

Mr. Lawlor: I have a short long statement. It's on this whole issue we're talking about. It seems to me we're not going to reach a resolution of this particular item in these estimates and it's going to devolve upon the Minister of Correctional Services (Mr. Walker).

May I say in approaching that, that it seems to me these reports, the Stanley report and the Madden report, are predicated upon totally false premises. I'm surprised such a document would be produced by people who are, I trust, legally knowledgeable. The prediction is that they look at the number of acquittals, at the number of people released at the end of the day and say, "Why weren't they released at the beginning, at the first of the day?" without any in-depth analysis as to the various diverse reasons, some of them very valid, that exist why they ought not to have been released.

This doesn't in any way mitigate the situation from the Attorney General's standpoint. In his great surveillance, analysis, and cognizance as to those minimal number of cases which are improperly incarcerated for one reason or another during that period of time, he must alleviate that situation. It probably arises—from what we have discussed—for two reasons: bail on one side and lawyers seeking

adjournments on the other. Perhaps we will come back to the adjournment issue, at least a little, if we have any time in the latter part of these estimates. That's basically all I want to say.

Mrs. Campbell: I don't think I have any further useful comments. I'm hoping to hear back as a result of the case I put to the Attorney General. I believe he took it seriously. I hope he did but unfortunately time passes and I may never hear of that case again or what happened to it.

I would like the Attorney General to bear in mind that I would like to know what has been done about it and what the outcome is, not in specific terms. I carefully anonymized the notes I gave but you have the names, you have all the facts available to me and I want to know first, what you are doing in that specific case and second, how you are relating that case and what kind of relationship it may bear to the broader issue.

Hon. Mr. McMurtry: I think you appreciate, Mrs. Campbell, that when it comes to the conduct of JPs as judicial officers there are certain obvious restraints in so far as the role of the Ministry of the Attorney General is concerned. This matter will certainly be reviewed with the chief judge of the provincial court.

To a large extent I believe it is necessary that we rely on his judgement in dealing with this matter. Short of asking that it be referred formally to the review committee that deals with matters involving justices of the peace—what's the formal name of that committee, Mr. Campbell?

Mr. A. Campbell: I think it's the justice of the peace review council.

Hon. Mr. McMurtry: Review council, yes. We will certainly report back to you on the matter.

Mrs. Campbell: I would appreciate it and I would think that in a case of this kind it might be useful if it were referred to the committee, because there is always the open question as to whether this was an isolated case. My view, at this point, is that it is not and I think it should be taken in the



context of the wider practice so we may ascertain to what extent this kind of case is a reflection of a weakness in the system.

Hon. Mr. McMurtry I appreciate that.

Item 1 agreed to.

Items 2 to 5, inclusive, agreed to.

On item 6, systems development services:

Mr. Ziemba: Just before we carry the systems development services, would the Attorney General be familiar with furniture that goes astray in his ministry?

Hon. Mr. McMurtry: No.

Mr. Ziemba: It's too bad the deputy minister isn't here because he knows about it. He appeared before the public accounts committee—

Hon. Mr. McMurtry: I do know that a certain gentleman, who is well known to some of us at Queen's Park, chained himself to a coffee table one day and was seen leaving the building chained to the coffee table.

Mr. Ziemba: We have just been informed that most of it has been recovered.

Mr. T. P. Reid: Have a good time in Rainy River.

Hon. Mr. McMurtry: Apart from the gentleman chained to the coffee table—I mean, he left on his own volition but apparently he took the coffee table with him and his chain. I don't know whether that was ever recovered or not.

Mrs. Campbell: To whom did the chain belong?

Hon. Mr. McMurtry: It was his chain and he chained himself to the coffee table.

Mr. Carter indicates to me he has some knowledge of the matter, which I must confess I have no knowledge of.

Mr. Ziemba: Do you have a new system in place to look after furniture in your ministry?

Mr. Carter: Yes. The issue in question came up from an audit report of 1977. Since then, the system has been quite revamped. I might say, the Deputy Attorney General wrote to the chairman of the public accounts committee approximately two weeks ago and itemized where the outstanding items were.

I recall there were two outstanding items out of approximately 25 items that I think were raised in the original audit report. One was a calculator which, in 1968, was valued at \$50, and was declared surplus approximately two years ago. The other item was a chair. But the system has been changed.

Mr. Ziemba: So you have 23 of the items back?

Mr. Carter: Yes; two are outstanding.

Mrs. Campbell: Including the coffee table, I suppose?

Mr. Chairman: It might be worth checking in the attic, where Leslie Frost was able to find the missing legislative clock.

Mr. Carter: The coffee table in question was not one of the items.

Mr. Ziemba: Where were they? Did they go to some of you—

Mr. Carter: Very simply put, some were transferred to a project in Hamilton, which was called the Metro West project, and were put on the inventory of that office and were subsequently recorded there. They were left in our records as outstanding. A number of the items were declared surplus back about 1977-78 and hadn't been entered in the records.

Mr. Ziemba: So they weren't found in anyone's recreation room?

Mr. Carter: They certainly weren't.

Mrs. Campbell: They lose personnel too, let me tell you, in this ministry. They don't know where they are—including judges. That's my experience.

Hon. Mr. McMurtry: Did you ever get lost, Margaret, as a judge?

Mrs. Campbell: Yes. They had me on vacation when I was substituting in the court in Kingston. They couldn't find me, and they had sent me there in the first place.

Item 6 agreed to.

Vote 1402 agreed to.

Mr. Chairman: We have just spent \$39,800,100.

Mrs. Campbell: I wish you wouldn't keep on saying that because this is one ministry that I am very solidly supporting an increase for and I don't like these figures to be put into the record in that form.

Mr. Chairman: It's just a matter that it is estimates, Mrs. Campbell.

Mrs. Campbell: Oh, I know.

On vote 1403, guardian and trustee services program:

Mrs. Campbell: I indicated, Mr. Chairman, that while I think there are questions which I would have liked to pursue, I was not going to deal with those items at this time because I think there are other items which are of greater immediate concern, and time is running out. So I am refraining from any discussion.

11:50 a.m.

**Mr. Ziembra:** May I just put one question to the Attorney General, please? What can you do by way of giving the public trustee more authority to protect people against themselves when they hire lawyers?

I have had so many cases. One comes to mind in which a woman was determined to get justice at all costs. She loved her husband, but her husband had found someone else and was suing for divorce. She was contesting it, or something. To make a long story short, the lawyer rapped her with a bill for \$10,000. His lawyer's bill was \$10,000. She ended up paying the whole shot because she lost the case. So here is a woman who kind of went off the deep end. She had a house that was paid for. I wrote you about this.

**Hon. Mr. McMurtry:** Excuse me, Mr. Ziembra. Mr. Chairman, I am sure you wouldn't mind my interjecting at this time to welcome formally to the committee's deliberations our very distinguished public trustee, Mr. Bert McComiskey, and the official guardian, Mr. Lloyd Perry.

**Mr. Ziembra:** Welcome, gentlemen.

Here is the problem as I see it. We have these lawyers who don't care if the woman is in an emotional state. They are going along with at at \$100 per hour, dragging these bloody cases out. She gets whacked with a \$20,000 bill. At that point the sheriff moves in on her house because she is not paying her bills.

So the lawyers move—whatever the action is—to seize her house. She doesn't believe this. They actually have a sale of her house. Her son tried to buy the house back with an American Express credit card and the sheriff wouldn't honour it. The poor woman lost her house. A speculator bought it for \$39,000. The house was worth about \$65,000 at the time, which was a couple of years ago.

She couldn't believe that her house could be sold from under her. She came to me and I couldn't believe it. I thought there would be no trouble; I would get hold of the sheriff and get it back. You have this sort of redemption period, or so I thought.

But it doesn't work that way. There is no redemption period. When it's sold under the sheriff's power of sale, that's it. It's final. She was evicted from her house and she is still phoning me. There is nothing I can do to help her.

But what bothers me is that she went wrong when lawyers carried on an action they knew was hopeless from the start, knowing that she had a house paid for that they could seize. Their money was secure.

Here's a woman now living in a shelter. After everything was said and done the house was sold, and she wound up with, I think, \$11,000 that she has never accepted from the sheriff. He offered her the cheque, but she has turned it down. She is living in a shelter, and she is in such an emotional state that I would say she probably needs psychiatric help at this point.

What do we do in cases like that? How do we control lawyers? How do we protect people from having lawyers do unnecessary and prolonged work for them?

**Hon. Mr. McMurtry:** As you know, the law society is the governing body of the legal profession in Ontario, which, as with other professions is a self-governing body that looks after its own disciplinary matters. Of course, the lawyers are open to lawsuits against them for negligence.

**Mr. Ziembra:** They did nothing wrong. They just represented her as she wanted them to.

**Hon. Mr. McMurtry:** I think a lawyer's responsibilities go beyond simply representing a client in the manner that the client wishes them to. I mean, if the client is clearly wanting to embark on a course of action that is not in the client's interest, the lawyer has a responsibility.

There are two obvious courses of action open to the lawyer. The lawyer indicates that the client, in his own interest, follow his advice. If the client chooses not to follow his advice, he indicates it would be in the client's interest to get another lawyer. A lawyer should not blindly follow the instructions of a client when he realizes the instructions are not in the client's best interest.

**Mr. Ziembra:** I will bring you an exchange of correspondence on this matter, Mr. Attorney General, where you as much as said: "Tough. That's the way things are." I'll bring you that right now.

**Hon. Mr. McMurtry:** I beg your pardon?

**Mr. Ziembra:** I'll bring you an exchange of letters. You apparently had a look at this case and just accepted it as the way things happen in the real world. You found nothing wrong with it.

**Hon. Mr. McMurtry:** I didn't say that. Mr. Ziembra. I think sometimes you get off on tangents and are not the slightest bit interested in what anybody else says.

**Mr. Ziembra:** You are telling me now something different—

**Hon. Mr. McMurtry:** I am just telling you, we are talking in general terms. You were asking me in general, I assume, what

are the responsibilities of the legal profession. If she is unhappy with the account, there are services whereby she can challenge the lawyer's account. As we indicated in the throne speech, we are introducing legislation this spring to improve and simplify the situation called the taxing process—when a client taxes a lawyer's fee. It is to be called the Solicitors' Fees Act. We hope this will be an improvement on the legislation.

I thought a moment ago you were very distressed. Now, Mr. Ziemba, you seem to find the whole thing unusually amusing. I really don't know whether you want me to take you seriously or not.

Mr. Ziemba: The taxing business is a joke, Mr. Attorney General. Any time I—

Hon. Mr. McMurtry: It's not a joke at all. I can tell you it's not.

Mr. Ziemba: You are lucky to get 10 per cent off when they whack you with a bill. When somebody gets socked with a \$20,000 bill, I think that is unconscionable. Here's a woman's entire estate wiped out because she was foolish, and lawyers couldn't advise her against pursuing a hopeless course of action.

Hon. Mr. McMurtry: Mr. Ziemba, again I cannot without all the facts, either condemn or condone the behaviour of a particular lawyer off the top of my head.

Mr. Ziemba: I will bring you your letters.

Hon. Mr. McMurtry: All I can point out is that there is a process available for a client who is dissatisfied with a lawyer's fee. The Ministry of the Attorney General has no jurisdiction to intervene in a dispute, or between a client and his or her solicitor.

We can refer a complaint, of course, and we frequently do, to the law society. I often write to the law society indicating that a complaint has been brought to my attention and ask them to look into it. Obviously one cannot make a judgement on these matters, unless one has all the relevant facts, and one cannot be assured of having all the relevant facts in most of these cases without some form of hearing. It is a very rare case in which there is a dispute as to what the facts are.

I am not quarrelling with your concern, but given the limits of my jurisdiction—you would like me to say, I suppose, that the lawyer is a scoundrel and that I am shocked. I don't know.

Mr. Ziemba: No. I think your chief judge, when he sees a silly situation like this developing in a court, could sit down with the lawyers and say: "Listen, you guys, you are just dragging out something that is going to

cost somebody an awful lot of money. Let's put an end to it here and now." Why couldn't he do something like that?

12 noon

Hon. Mr. McMurtry: First of all, it's not my chief judge or chief justice. As you know, a very fundamental foundation of our society is the independence of the judiciary. There may be situations I am unhappy about from time to time, but obviously the interests of the community are best served by this independence.

Judges frequently bring lawyers into their chambers during the course of a law suit, and say: "Now, I think I know enough of the facts of this case to believe you are perhaps embarking on a long and expensive course in pursuing this litigation. Can you not get together and try to resolve it?" When they think it is clearly in the interests of the clients, when they think something is being dragged out, where it may appear the litigation will be very expensive in relation to the issues, judges will engage in frank discussions with lawyers along these lines.

Of course a judge must be careful in each individual case not to descend into the arena to such an extent as to deprive an individual litigant of his desire to have "his day in court." I do not know what I can add to that, Mr. Ziemba.

Mrs. Campbell: Mr. Chairman, the opening remarks addressed themselves to the role of the public trustee. Sometime I would like to have the opportunity to discuss with Mr. Ziemba two cases, which in my early days in the courts were set out as examples where it was just as well, in the beginning stages, that the public trustee was not involved.

One was a famous case of a namesake of mine—who was not related to the best of my knowledge—who was deemed by all and sundry to be mentally ill. Lawyers rather avoided her. She picketed one of the trust companies in downtown Toronto, and in the long run, on her own, won her case.

There was another case that is known, I think, to most people; it was the case of Sophie Cohen. I think in the final analysis somebody did intervene. But she started her career with people thinking that she was incapable and she proved to everybody's amazement that she was not as incapable as they thought. She certainly did win some cases in the early days without counsel because she had been written off somewhat. So I would have some concerns about the public trustee coming into these sorts of situations.

On the taxing thing, I can say I will welcome something about taxation. In my early



days, we had a military gentleman as a taxing officer. I can remember one very famous counsel, who was later a judge, appealing that decision in the court of appeals—

**Hon. Mr. McMurtry:** Colonel Hunter.

**Mrs. Campbell:** Yes. I was there one day when Colonel Hunter threw papers back to one Mr. John J. Robinette. The stamps weren't right. I developed the practice of carrying the stamps in one hand and the papers in the other and having him tell me, point by point, where to stamp the things.

But in the case which was appealed, the Court of Appeals said, "Mr. So-and-so, this case has been heard by the taxing officer." His counsel said, "That's just it, my lord, that's just it; it wasn't heard, it was court-martialled." So we do need some changes. In those days it was a very amazing operation.

**Hon. Mr. McMurtry:** I can recall—this is also anecdotal—I think the system has improved a little over the years—there was one taxing officer who was carrying on courageously with a severe disability. He had had a throat operation and virtually had no voice except out of the voice box, so it made it difficult to have a free-flow discussion about some of these bills. So one suspected if you got in there early and got your case on the table, just by reason of the fact everyone felt a little badly about his disability it did inhibit free argument.

**Mrs. Campbell:** I welcome the proposed changes.

**Mr. Lawlor:** I will speak to Mr. Ziembra about that case and have a look at it. I didn't want to say it while he was here but I think what he was really saying was what Shakespeare said, "When the revolution comes we will kill all the lawyers," or perhaps, as Thomas More said, "We will have none whatsoever to start with."

**Mrs. Campbell:** That, in the minds of some of my colleagues, would be Utopia.

**Mr. Lawlor:** I have to agree with Margaret. I am anxious to get on to the courts and other things without downplaying. I think on some occasion we should spend a good deal of time, hew out the time and have a colloquy with both the official guardian and the public trustee in depth because with new legislation coming through they have a multitude of new problems, widening of certification of the mentally ill, representation of children, et cetera. We have a report before us at this time, which we can give a more elaborate going over.

The only matter that occurs to me at the moment, involving both and probably all three offices, is interest rates and the adjustment. What is the situation on that? There was some complaint earlier that they were by statutory fiat set at a certain level and were not running in adjustment to the current market situation and therefore it stinks and moneys being paid in were being mulct.

**Hon. Mr. McMurtry:** I will ask Mr. McComiskey to address himself in detail, Mr. Lawlor. My understanding is that the public trustee's office at any one time has significant investments in guaranteed trust certificates which reflect a realistic rate of interest, apart from the funds the office must keep on hand to pay expenses for individuals whose estates are being managed by the public trustee's office.

That's a judgement call, I assume, as to how much must be maintained in a current account to pay those expenses as they come along, but there are large amounts of money attracting the trust company interest.

**Mr. McComiskey,** would you like to add to that?

**Mr. McComiskey:** We have a number of different situations, Mr. Lawlor. Let me talk to you about the mental patients. Our problem is that when a patient comes under our control we are never quite sure how long he is going to be there, so we have a basic principle that we should maintain his or her assets in the form in which we got them so we can return them in that form.

If they are released from the hospital, we also have to be prepared to pay maintenance for them somewhere, family allowances, so we have to keep money on hand to provide for foreseeable expenses.

12:10 p.m.

**Mr. Lawlor:** In current liquid form.

**Mr. McComiskey:** Basically in current liquid form, in cash, in effect.

If we can be satisfied from medical reports that the patient is likely to be hospitalized for some time, then we go to the true trustee position and invest his assets in securities such as guaranteed investment certificate or deposit receipts so the patient gets the benefit of the investment made on his behalf.

The surplus funds we have have to be invested under the Public Trustee Act, under the Financial Administration Act, and that limits us to securities backed by government. In the main our investment is in province of Ontario bonds or Hydro bonds. Some of those investments were made years ago and our average yield comes out to 9.31 per cent.

We are keeping a very close eye on this and we did increase our interest rate as of April 1 to nine per cent. We are not buying bonds at the moment, we're short-terming money and we have a total investment of \$100 million in rough figures: \$75 million of that is in Hydro bonds; \$13 million is in province of Ontario bonds; and the remainder we're short-terming on 30 to 60 day periods. We put out \$10 million yesterday at 15.58 per cent. As far as possible we are taking advantage of the current money market.

**Mr. Chairman:** Any further questions? Any other member of the committee wish to ask questions on the official guardian or public trustee? We thank Mr. Perry and Mr. McComiskey for being present and we will call the vote on 1403.

Items 1 to 3, inclusive, agreed to.

Vote 1403 agreed to.

On vote 1404, crown legal services program:

**Mr. Chairman:** We have three items under vote 1404: the criminal law division, civil law division and common legal services. Shall we deal with any one of those three at once? It's the easiest way, I think, of handling it.

**Mrs. Campbell:** I have a series of matters I wish to raise under this particular vote.

I had raised with the Attorney General the matter of the Sproule case. It relates, I think, to correspondence I had with the Attorney General on another case in Windsor and the actions of the crown in this particular case. I was in error in my statement as to the charge, although there may have been some change in the course of it, but I will deal with it on the basis of an indecent assault.

The case was set for trial on November 13 at the University Avenue court and was then moved to the North York court for trial on October 22. The police officer pleaded guilty.

The concern I have about these cases is with respect to the fact that the investigating officers and other witnesses were not informed of the change in venue. In a case of this kind, I would like to know whose responsibility it is to make this decision, and should the crown not make sure that persons involved are advised as to the change, notwithstanding that there was a guilty plea in this case.

The other case in Windsor—and the facts are not clearly before me—was the case of a person charged in the criminal courts and also in the family court. The Attorney General may recall those persons involved were not advised that the criminal charges were being dropped and the matter would be heard in the family court.

The minister was kind enough to indicate to me he had addressed the matter in this particular case, because he too felt there was some onus on the crown not to disregard those who had an interest in the matter. This case seems to come under the same type of heading. Whose responsibility is it when the venue is changed?

**Hon. Mr. McMurtry:** Generally the police officer in charge of the case is responsible for contacting the witnesses and arranging for the witnesses to be subpoenaed.

**Mrs. Campbell:** But not the conduct of the matter as far as the venue is concerned.

**Hon. Mr. McMurtry:** No. The change of venue would be a crown decision.

**Mrs. Campbell:** The investigating police officers were not advised of the change in venue either. I would like to know the role of the crown.

**Hon. Mr. McMurtry:** Yes. Mr. Takach will address himself to this whole matter.

**Mr. Takach:** Generally, the responsibility for the following the case through should be with the investigating officer, be it with respect to the trial date or with respect of venue. However, there is no question in my mind that there is responsibility on the crown to see the police are notified of changes as quickly as possible and whenever possible so there is not a breakdown of communication, either with respect to the attendance of the investigating officer—as so often required even on a plea of guilt—

**Mrs. Campbell:** In this case apparently not required.

**Mr. Takach:** —or with respect to the other witnesses.

No, an investigating officer is not always required on a plea of guilt and there are many times in which you say to the officer: "All right. I have the crown confidential; we have reviewed it together; I know the evidence to put in. You are away." Or, "You have a conflicting court assignment." Or: "It is not necessary for the public to suffer the expense of your attendance. It can be dealt with adequately without your attendance." So it depends on the particular case.

With respect to this case, perhaps I could give you some background on it so it is all put in context. As you are aware, the accused was originally scheduled to be tried on November 13, 1979. This was after a committal for trial and after a preliminary hearing. The case went to assignment court. November 13, 1979 was set as the date. The accused, through his counsel, selected, I be-

lieve, trial by judge and jury, although that is not really relevant at this point.

At some point counsel for the accused decided he wished to re-elect to plead guilty before the provincial court judge who had conducted the preliminary hearing. Crown counsel on the case who was Mr. Leggett, the deputy crown for North York—as you are aware—arranged with counsel for the accused to have that disposed of on October 22.

12:20 p.m.

By virtue of the fact there is an arrangement between the two jurisdictions in question, namely Scarborough and North York—and, for that matter, the downtown office—to have opposing crown counsel prosecute the cases, the matter was originally scheduled for downtown. Hence, when it became apparent there was going to be a plea of guilt, counsel for the accused person asked whether the matter might be dealt with in the normal jurisdiction with Mr. Leggett in North York. Mr. Leggett agreed.

I think Mr. Leggett was away around that time and the case was scheduled to be brought up on October 22, which was Mr. Leggett's first day back from holidays. The case did come up in North York. This was as a result of an arrangement with counsel for the accused and other crown counsel in Mr. Leggett's office. The case was prosecuted on October 22; as a matter of fact, it was prosecuted vigorously and there was a strong request made by the crown that a jail sentence be imposed.

In any event, the accused pleaded guilty on the date in question. As a result of that plea of guilt, Mr. Maxwell in the downtown office, under the administrating officer, forwarded to the Metropolitan Toronto police department by memorandum the results of that prosecution and the fact that the case had been dealt with that day. A memorandum was sent to the investigating officer who was an officer in the general assignment squad. He happened to be on holidays, and for some reason the memorandum advising the police of the change did not come to the investigating officer's attention. Accordingly it did not come to the attention of some of the senior police personnel, with the result that when the trial date approached on November 13 the police, for some reason, did not know the case had been heard on October 22 when the investigating officer was away, notwithstanding the fact that a letter had been directed to the Metropolitan Toronto police to that effect.

I believe it was when a reporter inquired on November 9—the Friday before the 13th—

that senior police personnel became concerned; they found it was not on the docket for November 13. That caused inquiries to be made.

I believe for a short period of time, after the articles appeared in the press around November 13 or thereafter, there was some confusion. There was not an understanding that the police had been advised of the disposition and of the change of date.

It was reviewed with the police thereafter and I recall reading articles in the press that the police were satisfied and understood subsequently what had taken place, namely that they had been notified but that something had happened internally. There was just a failure to communicate, as we say, and that is why they did not know the change of date, but Mr. Leggett had taken pains to ensure that the police were notified of the changed circumstances. For some reason that did not happen.

Mrs. Campbell: What bothers me is that this was a case where a police officer was charged. As it transpired, the person who undoubtedly was the victim of this offence was never at any time aware, as I understand it, of all of this internal operation. I am not so concerned about the police. I understand a fine was imposed. What does bother me is the perspective of the public, and certainly the perspective of the victim, as to what kind of shenanigans were going on. She was not even told of the guilty plea and it was all over without her knowledge.

I think this kind of thing, where there is a breakdown, where the crown doesn't seem to feel any kind of obligation to the victim at all, can bring our system into disrepute in the eyes of the public. Your explanation is an understandable explanation for us, but this, of course, is the second case where the crown attorney has really not concerned himself with the views of the victim or, in the other case, the parents of the victim, who were left completely in the dark. It seems to me that at some time the crown ought to be responsible, at least to the victim, so that he knows what is going on.

Mr. Lawlor: I want to join Mrs. Campbell on this. Charges are laid, individuals know. It happens with a good deal of traffic offences—and certain more serious ones now, not just failure to stop. Charges are laid, somebody has been victimized, et cetera. They know about that, but they never hear another bloody word.

Mrs. Campbell: Exactly.

Mr. Lawlor: They come to my constituency office and ask when that case is coming up,



as though I had a file or a computer in front of me.

**Mrs. Campbell:** And you do.

**Mr. Lawlor:** I have to write to the Attorney General and we often find it has been tried and was over with a long time ago. People do feel let down on that count. Very often they feel they ought to have had a chance to appear and testify, or at least to appear and hear the proceedings. I don't know if that involves a great deal of machinery on the part of the Attorney General's office or whoever is responsible. Maybe it is the business of the police to inform people of the progress of a particular case, particularly when they are personally involved.

**Mrs. Campbell:** When the trial was set for November 13, as far as I know the victim was not told of the earlier disposition. This is according to the information I have, which is not first hand in this case.

**Hon. Mr. McMurtry:** I must admit, Mrs. Campbell, I haven't addressed myself to that aspect. Your initial inquiry to me, as I recall, was based on what you believed to have been a dismissal or withdrawal of the case because the victim had not been notified to give evidence.

**Mrs. Campbell:** No, my original concern was the change of venue without the victim's being informed.

**Hon. Mr. McMurtry:** When you first spoke to me, your information was that the case had not been proceeded with. That was my understanding.

**Mrs. Campbell:** No. I knew it had been proceeded with. I am sorry if I didn't make it clear. I knew the case had been proceeded with and that a fine had been imposed, but I was concerned in the first instance as to why there had been a change of venue; then, as we explored it further, why in the world the person who might be deemed to have some interest in a disposition would not be told (a) of the change of venue and (b) of the change of date.

**Hon. Mr. McMurtry:** I gather the original preliminary hearing was in North York. There was a preliminary hearing and the accused was committed for trial.

**Mrs. Campbell:** For November 13 at the University Avenue courthouse.

12:30 p.m.

**Hon. Mr. McMurtry:** Yes. That would be the normal course of events. They all, of course, go to the University Avenue courthouse. Then, when the individual changed his mind and decided to plead guilty, it re-

verted to the same jurisdiction where the charge had been laid and where the preliminary hearing had been heard.

The crown, I suppose, could have proceeded with it downtown. But the crown, as I understand it, has a discretion in these cases to determine whether the matter is going to be heard in the provincial court or proceed in the county court.

**Mrs. Campbell:** What I am saying is the victim is the outsider. The accused had his lawyer; the crown was represented appropriately; but the victim wasn't even told of all the arrangements made between the other two parties. Recognizing, of course, that the crown is acting on her behalf.

There must be some onus on the crown to keep people advised and that's all I am trying to make of it. I hope Mr. Takachi, in his position, would view this matter seriously, particularly having given the other. I don't think I at any time gave this to Mr. Takachi. I dealt with the ministry.

I did have the other case in Windsor where people don't know what is going on. They understood from the police and from the crown in the Windsor case, as I recall, that the criminal charge was going to be proceeded with. Suddenly it was in family court. Suddenly they are not even advised and they show up for the trial in the criminal court. Why wouldn't they? Nobody told them it wasn't going on. It's a sloppiness I think has to be corrected in order to protect the image of our administration of criminal justice.

**Mr. Takachi:** I couldn't agree more that the victim should be kept as well informed as possible.

In this particular case I did not review with Mr. Leggett whether he personally informed her of the changed circumstances. What would normally happen, in my experience, is that the crown would advise the investigating officer and it wouldn't even be necessary to advise the investigating officer—

**Mrs. Campbell:** It didn't here.

**Mr. Takachi:** —to notify the victim. But without seeming over-protective of the way this prosecution was handled, had the police received the information and had there not been some failure to communicate within the police department, then the investigating officer, almost as a matter of course, would go to the victim in a very serious case such as this.

Granted there are other cases where the officers don't pick up this responsibility and they should. But in this case, the investigating

officer's normal course would be to go to the victim and say: "Look, you don't have to appear on November 13. You will recall you testified at the preliminary hearing. The accused changed his mind and pleaded guilty. Your evidence was before the court. It was the same judge and the accused was disposed of and received this particular penalty."

In this instance, because the police didn't get that information for some reason, the victim was not notified and neither Mr. Leggett nor his staff had any way of knowing the victim had not been contacted.

**Mrs. Campbell:** Well, I draw it to your attention. The perspective of the public is absolutely essential in the support of the system. Cases like that cause the public to say, "We don't agree with you that more money should go to that ministry." It is important that the public be with us—

**Mr. Takach:** Yes.

**Mrs. Campbell:** —in the administration of justice.

**Mr. Takach:** Absolutely.

**Mrs. Campbell:** And they aren't when this sort of thing happens.

**Mr. Takach:** As the saying goes, they must see the justice done in order to have confidence. There is no issue about that and we certainly foster as much communication as possible between crown counsel and those who are victims of criminal offences. It is most important that they feel someone is acting on their behalf, I agree.

**Mrs. Campbell:** The second matter I would like to speak to is the Henderson matter. The Attorney General, in answer to my questions in the House on April 17, advised that he had reviewed your report, Mr. Takach—

**Mr. Takach:** Yes.

**Mrs. Campbell:** —and had come to his own conclusions. I believe it is incumbent upon the minister to make available at least to the two critics the report upon which he based his decision.

The case still stands in a difficult public light. At this time I don't think I can go through the whole chronology of this case, but it still leaves questions in the minds of the public. Of course, the police question is apart from our discussion here.

The crown's position again is I think still a matter of controversy. I am jealous, as jealous as any of you, as to the perspective of our justice system because it's vital to our whole way of life and your responsibilities are very great.

I had another similar case, although fortunately it was resolved. The crown did not

become involved and there was a police apology, in circumstances where they broke down a door in a constituent's home and commenced a search—he was in a wheelchair, it was a pretty frightening experience—but they found in that case they didn't have to pursue the matter. Their informant apparently was inaccurate. There was an apology and the door was repaired at police expense.

I am not bringing these matters forward as part of policing. I am bringing them forward as a matter of the crown's responsibility in these cases. I would ask that Mr. Takach's report be made available to both of the critics of this committee, so that we may more perfectly understand the decision of the Attorney General as a result of his perusal of that report.

**Hon. Mr. McMurtry:** I can't recall everything in the report, that is why I was conferring with Mr. Takach, Mrs. Campbell. As far as I am concerned, that report can be made available to you.

12:40 p.m.

**Mrs. Campbell:** I was suggesting to me and Mr. Warner.

**Hon. Mr. McMurtry:** Yes, I appreciate that. Again, in confidence, because there are matters in that report which if made public perhaps would not be fair to Mr. Henderson.

**Mrs. Campbell:** You indicated that in your reply to me. I think in this committee one has to have some trust in those of us who seek to serve the ends of justice.

**Hon. Mr. McMurtry:** There's no question about that, Mrs. Campbell. I was indicating that I was still treating the report as a confidential document because obviously there will be reports made available to you that may not have to be regarded as confidential.

**Mrs. Campbell:** Speaking to that too, I am looking forward to a discussion on the whole matter of freedom of information. You are quite correct, the report may indicate certain matters which would not be to the benefit of any person, particularly someone who was so visibly in the press yesterday. I sometimes wonder to what extent the person has an opportunity to set the record straight himself.

That goes to a very deep-seated concern I have. You have reports from certain people, all of whom I'm sure are persons of great integrity, but the person about whom the report is made remains in ignorance. I draw it to your attention as a matter about which I have concern.

I can't speak to this specific case because I haven't seen the report.

**Hon. Mr. McMurtry:** I think the courts and the community as a whole generally recognize the necessity of maintaining confidentiality with respect to police investigations.

**Mrs. Campbell:** Oh, yes.

**Hon. Mr. McMurtry:** If we were to inhibit the free and frank information exchange between police officers, we would immobilize them in a very real manner. I don't want to be in a position where police forces, when I ask for a report, are going to give me an edited version, knowing it is automatically going to be made public. Then the Attorney General would not have the information necessary to make certain judicial calls.

**Mrs. Campbell:** I am perfectly aware of that. It's a difficult situation.

**Hon. Mr. McMurtry:** I appreciate that, but the police first have to deal on a day-to-day basis with complaints and allegations many of which are frivolous. They have to record the allegations for their own records but if they became public it would be unfair to a lot of people who haven't been accused of or charged with anything, let alone convicted.

I think this is the aspect of confidentiality the public doesn't always appreciate. It is in the public interest, not in the police interest so much, that these matters be treated as confidential.

**Mrs. Campbell:** It's just that this is another case where the police activities themselves were brought under question. We have to look at what we're about when reports are made by police, against some of whom allegations were publicly aired. I think we have to be very careful about reports by the same force being treated as matters of pride. I guess that's as far as I wish to go, but it has left a lot of questions in my mind and I can assure you I am not alone. There are questions in the minds of others also.

I wish now to deal with another case. I'm going to deal with the victim and just try to get some facts. It was a murder charge. A young woman died. She was the alleged victim. This occurred on September 25, 1976, and a charge was laid November 24, 1976. There was a preliminary hearing.

**Mr. Lawlor:** I'm sorry, September or December?

**Mrs. Campbell:** September.

**Mr. Lawlor:** That was the date of the murder.

**Mrs. Campbell:** It was not decided that it was a murder. September 25 was the date of death of the victim. On November 24, 1976, charges were laid and there was a preliminary hearing.

The first question I have about this—and it is a question I put to Mr. Takach some months ago—concerns a delay with the transcript. The preliminary hearing started January 10, 1977, and it was some time in March or April 1978 when the transcript became available. I asked if I could have the reason for that delay. I have not received an answer as yet.

**Mr. Lawlor:** Was the preliminary hearing all done in one day?

**Mrs. Campbell:** No. It started on January 10, as I recall. It is not in this breakdown of time. I believe it was adjourned for a period and then continued a week or so later, if memory serves me.

**Mr. Lawlor:** How many days was the preliminary?

**Mrs. Campbell:** I haven't that before me. It was about a week, I think.

**Mr. Takach:** At least a week.

**Mr. Lawlor:** A pretty big time span.

**Mrs. Campbell:** Yes, but the preliminary finished. It says the accused was discharged, but I am of the opinion he was acquitted; that is where I have some question about the preliminary hearing. The preliminary hearing finished on March 23, 1977. The transcript was available in toto in March or April 1978. That's my first point. What happened?

**Hon. Mr. McMurtry:** Mr. Takach and I are both fairly familiar with the case.

**Mrs. Campbell:** I am aware that you are both familiar with the case.

**Hon. Mr. McMurtry:** Mr. Takach is a little more recently familiar or better familiar with it so I will yield to him.

**Mrs. Campbell:** How can you be "better familiar"? More familiar" or "less."

**Hon. Mr. McMurtry:** Better acquainted.

**Mr. Takach:** I think you indicated that you and I discussed the matter some weeks or months ago—

**Mrs. Campbell:** Months ago.

**Mr. Takach:** —and that is correct.

**Mrs. Campbell:** You said you would get me the answer and the transcript.

**Mr. Takach:** I did and I called you back, but I did not get a response from my call back to you with the information. I left a note with your secretary.



**Mrs. Campbell:** That means my office is at fault. I apologize. I was not aware you had called.

**Mr. Takach:** Perhaps I should have taken it upon myself to call you back again. I am sorry I did not. What I undertook to find out at that point was whether a transcript had been ordered and whether any of it was available by the spring or summer of 1977.

**Mrs. Campbell:** I knew it had been ordered and some was available earlier.

**Mr. Takach:** Yes, but that was your view and at that time I did not think that was the case. I subsequently found out you were right.

**Mrs. Campbell:** Good. Bully for me. Score one.

**Mr. Takach:** Indeed, some was available by that time and I found a letter in the file from one of my predecessors ordering the transcript. Shortly thereafter, we got a portion of it. However, as you have indicated, the whole transcript was not made available to us until the end of March 1978.

I can only talk about it from the crown's perspective and indicate I am aware that the court reporter in question had at least two other very major preliminary hearing and/or trial transcripts to complete, as well as his normal duties. Both of those involved the liberty of the subject; in other words, there were people in custody awaiting the preparation of those very voluminous transcripts.

The court reporter in question assured me those transcripts, together with the transcript in the matter to which you have referred, were being prepared with all possible haste. I reviewed the matter with him and wrote to him on a few occasions, and I also reviewed the matter with his supervisors in Toronto who assured me he was proceeding with it as quickly as he could. In short, we did get the transcript in March, notwithstanding the fact that some eight or nine months had elapsed since the transcript had been requested. We got it in portions. There was progress throughout those eight or nine months and we reviewed what we had available to us during that period of time.

The only thing I can say is I attempted diligently to pursue obtaining that transcript from the court reporter. I was assured by him that he was working on it. I was aware, from independent sources, that he had other matters that involved the liberty of the subject and that had equal, if not greater, urgency, and that it would be produced as soon as was reasonably possible having re-

gard to those other commitments and his normal day-to-day commitments. Therefore, we obtained it in the spring of 1978.

**Mrs. Campbell:** The reason it becomes important, in my view, is that as of April 18, 1977, the then chief crown attorney for the east-central region of Ontario indicated that he had been instructed by the then—there are so many “thens”—Assistant Deputy Attorney General to apply for a direct indictment.

**Hon. Mr. McMurtry:** I can tell you that is an erroneous report. That never happened.

**Mrs. Campbell:** Oh, my. Then I have to start investigating credibility and the Law Society of Upper Canada cannot come to a conclusion.

**Hon. Mr. McMurtry:** Where did you read that?

**Mrs. Campbell:** It wasn't a case of reading it. It was direct information.

**Hon. Mr. McMurtry:** I regret to advise you that information is simply incorrect. I, of course, was rather interested in some of the comments that had been made in the newspaper following the preliminary inquiry. Quite frankly, I felt some accounts which were attributed to crown counsel following the preliminary inquiry, while perhaps understandable given his interest in the case and his disappointment with the result of the preliminary inquiry, were unacceptable to me. Those were the statements to the effect that he was going to have an indictment preferred—not recommended—by the Attorney General. In effect, he was reported—in the press at least, in fairness to him—that it was just something that was going to happen.

I was very concerned about that statement. Obviously crown attorneys are sometimes disappointed when a case is dismissed in a style of preliminary hearing. To prefer an indictment when a person has been discharged at that date is obviously a prerogative which I have as Attorney General, but it should be exercised very cautiously and very judiciously, because it could quickly become an enormous abuse.

An individual who has gone through a long preliminary hearing and is discharged—

**Mrs. Campbell:** Acquitted, Mr. Attorney General, not discharged.

**Hon. Mr. McMurtry:** I think “discharged” is the correct term.

**Mrs. Campbell:** It is the correct term for a preliminary hearing if, in fact, the adjudication was in accordance with the principles of a preliminary hearing. I will get to that.

**Mr. Lawlor:** Except that for this, as I understood it, the terms are quite different. In the case of an acquittal, there is autrefois acquit involved. In the case of a discharge it seems to me they are open to relay charges subsequently.

**Mrs. Campbell:** You are correct on that particular point of view. I am looking to the way in which—as I would view the transcript—the judge at that hearing undertook to weigh the evidence. I think there is no dispute from Mr. Takach that—but I don't put words in his mouth; he is here to discuss his view of what took place at that preliminary hearing. I can only say I am not relying on a newspaper article in the statements I am making.

I guess, as I said, it then becomes a matter of credibility, which I had not thought I was going to have to address here.

Let us set aside for one moment whether or not I am correct. Supposing I were correct, I would think it would be a serious embarrassment to the administration of justice, if it were properly indicated that an indictment should be applied for, that the transcripts were not available for almost a year after that determination was made in a charge of murder. I am putting it on that basis at this

time. I think that is where the lengthy delay in obtaining the full transcript leads. Had the Attorney General approved of proceeding I should think that lengthy delay would have been an embarrassment to the crown in the pursuit of a matter of this kind.

**Hon. Mr. McMurtry:** There's no question about it.

**Mr. Lawlor:** Next day, I think we should get into that bit. There are other technical means of transcribing court proceedings readily available now, audio-visual techniques, which we should talk about then.

**Mrs. Campbell:** Yes. I would like to do that.

If I may proceed: Consistently throughout this period—and this I am relying on as a result of statements made to me by the parents of this deceased girl—

**Mr. Lawlor:** Mr. Chairman, on a point of order: I am sorry to interrupt you, Margaret, but we are are—

**Mrs. Campbell:** I'm sorry.

**Mr. Chairman:** The bell has rung, Mrs. Campbell. We will keep you first on our list to continue on Wednesday morning when we reconvene at 10 a.m.

The committee adjourned at 1:02 p.m.

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 Takach, J. D., Deputy Director of Criminal Law and Director of Crown Attorneys







No. J-8

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**  
Wednesday, May 7, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, MAY 7, 1980

The committee met at 9:35 a.m. in room 151.

After other business:

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

(continued)

10:10 a.m.

On vote 1404, crown legal services program:

**Mr. Vice-Chairman:** I will recognize a quorum. The committee has before it the Attorney General's estimates.

**Mrs. Campbell:** Thank you. I was in the midst of discussing a case and I would like to draw to the attention of the Attorney General that we have taken the opportunity of once more speaking with the chief crown attorney, as he was at that time, for the east-central region of Ontario. He has confirmed what we have said.

The newspaper article may be wrong in one respect and that is that it stated he was "directed" or "instructed"—I think the correct word was "authorized"—by the then Assistant Deputy Attorney General. His recollection was that Mr. Langdon was present at that time, so perhaps you might be able to check the accuracy of those statements, because we have one remaining person in the ministry. I did not press the matter the other day because you tended to dispute it. I just thought that was useful information.

**Hon. Mr. McMurtry:** I was not disputing what you say you were told. I was just making it very clear that I was satisfied the information you received was incorrect so far as the former Assistant Deputy Attorney General indicating I was going to prefer an indictment.

**Mrs. Campbell:** In any event, you did refer to the fact that this was a story in a newspaper. I wanted it clear that our information was not taken from a story in a newspaper.

**Hon. Mr. McMurtry:** No, I think it is very important that we make sure we both

know what we are referring to. I was not suggesting your information was taken from a newspaper.

**Mrs. Campbell:** I am sorry. That was my understanding.

**Hon. Mr. McMurtry:** I was just indicating that I saw a reference in a newspaper following a preliminary inquiry; a quote attributed to the crown attorney who conducted the preliminary hearing.

**Mrs. Campbell:** No.

**Hon. Mr. McMurtry:** I am referring to what I read in the newspaper. It was a quote attributed to the crown attorney who conducted the preliminary hearing which stated that the Attorney General would prefer an indictment, or words to that effect.

**Mrs. Campbell:** That is yet another crown attorney. My understanding is that the particular chief crown attorney for the east-central region did not, in fact, conduct the preliminary hearing.

**Hon. Mr. McMurtry:** That's correct.

**Mrs. Campbell:** Just to get the cast in place.

**Hon. Mr. McMurtry:** Mr. Sampson, who is our senior crown attorney or what we call the regional crown attorney, did not conduct the preliminary hearing. It was Mr. Bruce Affleck, as I recall.

**Mrs. Campbell:** I understood from him that he did not conduct it.

**Hon. Mr. McMurtry:** Mr. Sampson didn't.

**Mrs. Campbell:** That Mr. Affleck didn't.

**Hon. Mr. McMurtry:** My recollection is that Mr. Affleck did conduct the preliminary inquiry.

**Mrs. Campbell:** There are some more things we shall have to correct.

In any event, as of April 1977 the case seemed to stand as one which was to be proceeded with, as far as the public view was concerned. Subsequently—I suppose as a result of the newspaper articles—as I understand it, on April 27 you yourself had a meeting with defence counsel on that case

and I presume that would be something resulting from the newspaper publicity.

**Hon. Mr. McMurtry:** Mr. Robinette contacted me about the matter at one time. I know I discussed it with him. I honestly don't recall meeting with him but I may very well have met with him, because he was concerned about the statement I was concerned about. In the press it said I was going to prefer an indictment. Here was a man who had been dismissed and discharged at the preliminary inquiry—

**Mrs. Campbell:** I say acquitted.

**Hon. Mr. McMurtry:** —“discharged” is the term I prefer—and his counsel was understandably disturbed when he read in the paper that the crown attorney who conducted the inquiry said the Attorney General was going to prefer an indictment. Mr. Robinette took the position, I think quite properly, that he would like to make representations before the Attorney General preferred the indictment, given the circumstances of the discharge at the preliminary inquiry, which I thought was a very reasonable position for him to take.

**Mrs. Campbell:** I wasn't suggesting it was not. I am just going by the chronology.

**Hon. Mr. McMurtry:** I just think it's important for the record, so that those people who may not be as familiar with the process as you and I are would understand there is nothing unusual about defence counsel seeking a meeting with me.

**Mrs. Campbell:** Following that, we have the transcript becoming available in April 1978. The discharge was March 23, 1977, and the transcript becomes available in 1978. I have to say at this point I truly cannot accept the reasons given for that long delay in the transcripts. In December, the parents became aware for the first time the matter was closed.

I suppose the issues that flow from this are that a good deal was made of the one-year delay in obtaining the transcript as a factor in the crown's decision. We then look at the other case of the delayed Supreme Court of Canada appeal. In the minds of people there is a great dichotomy in these matters.

There is no question, and I think the Attorney General himself felt as I did, that the judge at the preliminary hearing did make himself both judge and jury. I don't think there's much question about that. Of course, to those who are still concerned with this matter, they now see Mr. Takach taking the function of the jury.

I am not eager to do anything to persecute anybody, but it seems to me there are so many crowns who have been concerned about this matter. You have the story of a young woman who has been married so short a time that one could expect the family would still know what her habits were; the fact that it is alleged she had a horror of pills; that she was with someone who by reason of his own expertise would be, regardless of how she got these pills, quite aware of the fact she was under the influence of some kind of medication, and apparently, although the stories are conflicting, there was very little effort to get her to refrain from walking out on the locks, and she was a person who couldn't swim, a very cautious person according to the evidence; the fact that there were a number of stories given that conflicted; the fact that large policies of insurance were taken out—in view of all of these matters, which are highly circumstantial, it seems to me that this case cries out for some deeper inquiry than it has been accorded.

10:20 a.m.

**Hon. Mr. McMurtry:** What are you suggesting at this point?

**Mrs. Campbell:** I am suggesting that there ought to be an inquiry into the circumstances of this case and I regret the great delays, which can only be hurtful to everyone involved in the matter. There are too many unanswered questions in this particular one.

Interestingly enough, too, when Mr. Affleck left his employment with the government and was apparently trying to be of some assistance to the parents, concern was raised within either the office of the Attorney General or the office of the crown attorney regarding the conflict of interest; someone approached the Law Society of Upper Canada with reference to this conflict-of-interest issue.

**Hon. Mr. McMurtry:** On Mr. Affleck's part?

**Mrs. Campbell:** No, on the part of the ministry, some branch of it.

**Hon. Mr. McMurtry:** This is news to me.

**Mrs. Campbell:** I think this is part of what you might perhaps look at in a preliminary way, that whoever they approached, in I take it to be an informal fashion, expressed an opinion that there was indeed a conflict, and I'm interested that anyone in the law society would express an opinion in the light of the—

**Hon. Mr. McMurtry:** I'm sorry, conflict of interest on whose part?

**Mrs. Campbell:** On Mr. Affleck's part, and so he no longer followed the matter.

**Hon. Mr. McMurtry:** What I would like to know, and I think this is important in fairness to Mr. Affleck who is not here to represent himself, are you saying there was some formal communication from the law society to Mr. Affleck?

**Mrs. Campbell:** I believe the communication came through the ministry and with the expression of the position of someone at the law society, and that therefore he acceded and no longer carried on any kind of relationship with the parents.

What I'm trying to say is that these appearances are what bother me. It is just not good enough that these things happen in a case of this kind. I would hope the Attorney General would initially investigate some of these matters in some depth, but I do believe the case cries out for an inquiry.

**Hon. Mr. McMurtry:** Mrs. Campbell, with great respect, I don't agree with you, simply on the basis Mr. Takach has indicated—which I believe is on the record; I know it was discussed the other day—that at no time were we satisfied that the delays in the production of the transcript could be justified in the normal course of events. It was a very unfortunate situation.

**Mrs. Campbell:** What steps did you take to ensure it won't happen again?

**Hon. Mr. McMurtry:** We have attempted to improve our administration of the court reporters in order to avoid these long delays. That aspect of it, I agree with you, deserved and did receive a follow-up to attempt to ensure, to the best one can in a system that does depend upon human beings to a very large extent, that these delays do not occur.

I think the important feature to be remembered here is that once we received the transcript it was reviewed by the law officers of the crown. As I recall their advice to me—I don't have it in front of me at the moment—I think it's important to note it was that a provincial court judge could have come to the same conclusion applying a different standard of proof. Certainly my recollection is in accordance with yours; the provincial court judge appeared to be making a determination as a judge, or as a jury as you have put it, on whether or not the crown's case had been proved beyond a reasonable doubt as opposed to the general standard of probable guilt, which is the standard that I understand is applied to determine whether or not a person will be committed for trial. The view of the senior law officers of the crown was that another judge could have discharged

the accused using what we regard as the appropriate standard of proof. Given that fact, the Attorney General should not prefer an indictment.

Regardless of the obvious suspicions about the possible guilt or otherwise of the accused, which will always remain, I don't know what an Attorney General can do other than state that the delay in the production of the transcript was a great embarrassment to the ministry and should not have happened, but that once the transcript had been made available it is likely our decision would have been the same if the transcript had been available many months earlier. While we understand the family's concern about the discharge of the accused person, I don't know what more we could do, given those circumstances.

To have any inquiry—I'm not sure what form of inquiry you are suggesting—would necessitate reopening the case, as it were. I don't know if that would be perceived as being fair to the accused, as a matter of principle.

Perhaps it is a little difficult for our distinguished colleagues Mr. Lawlor and Mr. Renwick to comment on this matter when they don't know all the details—

**Mrs. Campbell:** I have been trying to anonymize it as best I can.

10:30 a.m.

**Hon. Mr. McMurtry:** —but I just can't conceive of the type of inquiry that would be proper in the circumstances.

**Mr. Lawlor:** I wouldn't care to proffer the scanty wisdom of my advice in the matter at this moment. I would want to spend a little time on it—this is relatively new—and possibly consult with Margaret as to how strong her feelings really are. We may have to bring it back.

**Hon. Mr. McMurtry:** I certainly invite you to do that.

**Mrs. Campbell:** I think the question really is the discretion of the crown, which is perceived to be involved in absolving the error of the judge at the preliminary. The question is whether the crown is circumspect in other cases. And how this discretion is exercised and monitored. I think those are the things that come out of this admittedly very tortuous kind of case.

**Mr. Lawlor:** To place the accused in further jeopardy—

**Mrs. Campbell:** It's a problem, and that is why I have tried not to refer in any way specifically to the person. I think it goes perhaps to the root of what I said, that in my



view—of course my view could be entirely wrong and I accept that—it seemed that there was an error in the preliminary hearing and that the judge did accept a role as the jury in this case in weighing the evidence. I think that is admitted.

Mr. Takach, in writing to Mr. Williston, who had made a submission to Mr. Takach in the matter, indicated, "It is my respectful opinion that His Honour did err in discharging the accused at the preliminary hearing for the reasons that were given." In fairness, he goes on to say, "However, as the Attorney General has suggested that there was room to arrive at that conclusion on other grounds . . . it could be found that perhaps a jury exercising reasonable judgement might not have been able to make any other kind of finding . . ."

It is this lack of definition, I suppose, that is of concern to me and not the characters in the cast.

Mr. Lawlor: As I understand it, what you are saying is that a preliminary doesn't require all that much evidence to warrant sending the case on. If there are elements that are vacillating or indeterminate and are crucial—

Mrs. Campbell: That is for the jury to decide. That is, in effect, what I am saying. It's—

Mr. Lawlor: Of course, the whole world is intimidated by Mr. Robinette.

Mrs. Campbell: I did not say that. I don't think that they are intimidated; I think the respect they have for him is such that perhaps on occasion one may be inclined—but I am not suggesting anything of the kind.

I think the Attorney General himself has expressed his own concern about the case. Frankly, I don't know how one overcomes the errors which, admittedly, were made. I will leave it at that point, because time is wasting.

I understand that Mr. Renwick wanted to put a question and has to leave, so I would yield at this time. There are other matters dealing with the way in which the crown functions I do wish to get into, but they could be more lengthy. So, Mr. Chairman, I will yield the floor so Mr. Renwick can put his question.

Mr. Renwick: That's very kind of you. Mr. Chairman, quite likely the point I want to raise is in that sense out of order. I want to phrase it cautiously. I felt that sense in the pit of my stomach on Sunday out of concern at the Attorney General's remarks

at the rally with respect to the question of war criminals in Canada.

I listened very carefully to your comments, Mr. Attorney General. I do not know whether the portions that exercise me were matters in the text of your remarks or not. I notice that you did have a text; I couldn't tell the extent to which you adhered to it.

Hon. Mr. McMurtry: Mostly a few scribbled words.

Mr. Renwick: I listened very carefully to you and to the Honourable Robert Kaplan, the Solicitor General of Canada, speaking on that matter, and noted particularly that Robert Kaplan carefully stated that this whole question was a matter that had to be dealt with under the rule of the law. I was extremely concerned with the sensation I had when you said—I think this was your language—that legal technicalities would not be allowed to stand in the way of justice. It was some such remark as that. I'm always concerned about that item.

The reason for my concern is that I understand, although I have very little knowledge about it, that one of the methods used in the United States is the withdrawal of citizenship on the grounds of misrepresentation, at the time of application for the return of alleged war criminals to West Germany, in order that the matters can be dealt with under the jurisdiction of the West German government or, presumably, the East German government. I noticed that Robert Kaplan spoke about the ministries that were involved—External Affairs with the Honourable Mark MacGuigan and Employment and Immigration with the Honourable Lloyd Axworthy—before any instructions were given to the Royal Canadian Mounted Police that they should be very careful that any action be done in accordance with the rule of law.

I generally hear the phrase "legal technicalities" when someone is putting down a matter which I consider of substance. I usually hear a nonlawyer say, "That's a legal technicality the member is raising." My concern is, what was the extent of the wholesomeness of the phrases that you used and what is this co-operation you are extending, not only to the Solicitor General of Canada but also to the Attorneys General in the other provinces whose support you are going to enlist on this matter?

The Acting Chairman (Mr. Kerr): Mr. McMurtry, I am not sure if this is under vote 1404, item 1, 2, or 3, or as 1404. But I don't imagine the Attorney General has any objection to answering your question.

**Mr. Renwick:** Thank you, Mr. Chairman. I realize it was out of order. It was only because I had concern about the remarks, as I listened to both the federal Solicitor General and the provincial Solicitor General dealing with this topic at the rally on Sunday.

10:40 a.m.

**Hon. Mr. McMurtry:** The federal Solicitor General, as a private member, has together with members from all three political parties now represented in the federal House been pressing for the last couple of years for legislation to remove any technical and quite proper barriers if they exist in law to the prosecution of war criminals.

I agree with Mr. Renwick. The manner in which the term "technical legal grounds" has been employed can create misunderstanding, particularly if it is interpreted by anyone to mean we are suggesting that the rule of law, or existing law be circumvented in any way. That is totally unacceptable. I suggested, and my remarks alluded to the fact they would probably require legislation in the federal Parliament dealing with traditional matters or related to what the courts of Canada would do when they had jurisdiction for crimes committed in other jurisdictions. Different principles would have to be applied but they would have to be clearly enshrined in legislation passed by the Parliament of Canada.

In passing legislation by Parliament that touches on the administration of justice or criminal law, the federal government has always sought the advice of the provincial Attorneys General. It is my view, if legislation was forthcoming that would provide a framework in which prosecutions could be conducted according to law, I would support such legislation again and would invite the other Attorneys General to support such legislation.

As to the nature of the legislation, one would have to see. It's quite clear that after this period of time one would only support legislation that would ensure any persons affected were treated fairly and according to the traditional principles of natural justice. I agree with you, out of context the term "narrow legal technicalities," the suggestion they not provide a stumbling block, is meant by me to mean that some of the traditional principles applied with respect to trying people in a Canadian court with respect to offences that have occurred elsewhere—normally a Canadian court wouldn't have jurisdiction—Canadian courts would have to be vested with this jurisdiction according to proper legislation that would enshrine the traditional rights of any accused person.

Given the three or four minutes we were asked to speak I agree with you, that without a greater explanation on my part the term could be misinterpreted. When I saw the press report the next day I was, quite frankly, concerned about that. I'm glad you raised it because it did concern me. That I might be somehow suggesting the federal government might circumvent or not be so overly concerned with the rule of law, in the way it was reported, did trouble me. I appreciate your raising the matter today.

**Mr. Renwick:** I'm glad of your response because strangely enough I didn't read the press report. It was just that sense I had that without being elitist about the profession and body of law that is involved in it, a number of the traditional, fundamental rules can well be considered by persons not involved in the jurisprudential world as something called legal technicalities. There is the whole question of retroactive as against retrospective legislation—the suggestion that somehow there would be any intimation of a withdrawal of citizenship is one possibility—and the whole question of the jurisdiction of the Canadian courts to try these matters.

These raise very fundamental questions. I wouldn't want anyone to think it's simply a series of lawyers' quibbles that are barring the very legitimate concern of persons—which I share and I'm sure others do—that those who in different circumstances at different times might well have come to trial under the war crimes commission are now going to escape because of the lapse of time.

I am particularly concerned by any suggestion there is any change in the law which could threaten the status of naturalized Canadian citizens in this country, no matter how well-intentioned or purposeful the reason, because that kind of thing could well be used down the road for entirely different purposes.

I had experience on the reverse side of that some time ago with respect to the Royal Canadian Mounted Police and a Portuguese man who had come to Canada during the time of Salazar, the dictator of Portugal. He has lived in Canada for many years. His children were born and brought up here and have gone to school here.

I tried to raise the matter both here and federally, and I enlisted Jonathan Manthorpe, who was then a reporter for the Globe and Mail—this was before he was elevated to the supreme role of columnist—to see what could be done about the situation because the barrier to his Canadian citizenship was that he had been designated a security risk.

His position was quite clear, "I simply want to know why I'm not a Canadian citizen." There was no forum available for him, there was no place available for him, there was no way. I have not spoken to him for several years, but to my knowledge he still is not a Canadian citizen because somebody designated him a security risk.

If there is ever any opening in the reverse context which would start to tamper with the citizenship, I would be really concerned about it. The other aspect poses equally profound legal questions. A Canadian court sitting, taking jurisdiction over the trial of persons alleged to have committed crimes elsewhere, is an extremely difficult matter, particularly when you're talking about the crime involved—I shouldn't say "particularly," all crimes are of equal import. The horror of those times poses extremely difficult questions.

I'm glad you feel that way and I hope that, not on a special public occasion but on some other occasion, you might see that any wrong impression you unintentionally created about that matter would be eliminated. I just have an uneasy feeling that it was an awkward choice of expression.

10:50 a.m.

**Hon. Mr. McMurtry:** I appreciate your remarks. I share your concerns and accept the wisdom of your comments.

**Mrs. Campbell:** Getting back to the operations of the crown, I suppose the question I want to pose is: At what point is there an obligation on the crown to ensure that there is no abuse of the process of the court?

I am in an awkward position. I have this case before me. The counsel in the matter is Clayton Ruby. What happened was there was a charge against his client upon which the client was acquitted on October 27. It was a charge under the Sunday law.

Subsequently in December a further charge was laid and that case has not come to trial. That is why I have difficulty with the personnel involved.

Mr. Ruby has tried to ascertain from the crown in what way the circumstances of these other charges vary from the facts in the October case. It can be summed up in a letter from Mr. Ruby to the crown counsel operating under the Solicitor General's ministry. I assume you are still responsible for those crown counsel as well as anyone else. He said, "You were unable to give me any idea as to how the evidence will be different and when I requested that you inquire as to this information you refused."

I have talked to the officers and they assure me that the evidence will be different.

**Mr. Lawlor:** Pardon me, in Mr. Ruby's opinion will it be different?

**Mrs. Campbell:** No, and that's why he is seeking to ascertain if, having been acquitted once, there is some difference, but all he can get from the crown counsel is that the police assure him the evidence may be different. That's all he's prepared to do.

It seems to me that Mr. Ruby has a real complaint and as he concludes, "I advised you that I was dissatisfied with these contentless"—that's a new word to me—"assurances and remind you of your obligations as crown counsel to see that there was no abuse of the process of the courts."

In posing this question, it would seem to me that in circumstances of this kind the crown counsel ought to be in a position to give assurances of his own, having looked at the evidence, rather than saying, "Oh, well, the police tell me it will be different." To me, it's not a very helpful thing. Again, it puts into question the role of the crown in our court system, at least it does for me. I wonder if there could be any comment on it.

I was given this material, including the reasons, so I might be able to raise the matter. I am perfectly prepared to pass it on to you. In light of the fact there is a case pending, I can do nothing much more than what I am doing now.

**Hon. Mr. McMurtry:** In the normal course of events, the crown would have the responsibility not just of passing on the message from the police, which appears to have been done in this case, according to the correspondence, but at least of ascertaining from the police that the evidence was different. In my view, there would be an obligation for the crown to review the evidence rather than just state, "The police assure me."

Now, it may be just an unfortunate use of language. He may have reviewed the evidence and that may have led to his assurance. I do not know. But there would be an obligation on the crown at least to review the matter, review the nature, quality and character of the evidence that was going to be introduced, to determine whether or not the prosecution should be proceeded with.

**Mr. Kerr:** Is there a practice in Toronto of allowing defence counsel to see the crown sheet, for example?

**Hon. Mr. McMurtry:** Yes, it is a very common practice.

**Mrs. Campbell:** This is a memorandum. I do not think I should read it into the record because it is obviously—I take it, from the



content—a memorandum prepared by Mr. Ruby about a conversation he had with Mr. Spring. The thing that bothers me, if it is correct, is that this is the sort of system we have developed. It is particularly difficult when the crown is a part of the Ministry of the Solicitor General. I think it raises questions. If you are interested, I shall be happy to give you the material I have.

**Hon. Mr. McMurtry:** There are lawyers in a number of ministries who are responsible for the conduct of prosecutions under specific legislation which may fall under those ministries. The Ministry of the Environment is a major example.

**Mr. Kerr:** They are all employees of yours.

**Mrs. Campbell:** Yes, they are all employees of yours.

**Hon. Mr. McMurtry:** They are still part of the common legal system.

**Mrs. Campbell:** I just point out that it is an unfortunate situation, in my view, and one against which we should protect very jealously.

**Hon. Mr. McMurtry:** If you want to give us copies of the correspondence, we can review it. It may be that Mr. Ruby has decided this is as good a place as any to plead his case, as well as in the courts of the province.

**Mrs. Campbell:** That is why I have been trying to avoid it. It is just the issue that bothers me. We seem to be far more circumspect in other cases than we are in this one, that's all.

**Mr. Kerr:** I guess he wants his client to stay closed.

11 a.m.

**Mrs. Campbell:** You will recall my concerns expressed in the House on the matter of the delayed Supreme Court of Canada appeal. I suppose what is required is an explanation, because no explanation was really given. We have eminent counsel appearing in the Supreme Court and more or less apologizing to the court, but no explanation has ever been given for a lengthy delay in a case, again, involving an alleged murder.

I wonder if there is any way the Attorney General could supply us with the docket in that particular case, so we could more readily understand what transpired.

**Hon. Mr. McMurtry:** I am not sure to what you are referring Mrs. Campbell.

**Mrs. Campbell:** If you recall, it is the case I referred to as the "bizarre verdict matter" in Hamilton.

**Hon. Mr. McMurtry:** When you say the "verdict matter," yes, I recall, but I do not know what you mean by the docket in the case.

**Mrs. Campbell:** What caused the delay?

**Hon. Mr. McMurtry:** As I said in the Legislature and as Mr. Watt stated in the Supreme Court of Canada, the delay was caused really by human oversight on his part, which he did not attempt to excuse or justify. In effect, he just said, "Mea culpa." He made a very clear statement that he was at fault, that he was to blame for the delay. He had no excuse to offer other than human oversight, human error. I cannot imagine a crown counsel making a more forthright statement, in no way attempting to blame the delay on other work or other circumstances. He just said, "I have no reasonable excuse to offer the court for the delay."

I do not know what could possibly be added to this very clear statement on his part. He bared his breast, to use the vernacular, to the extent that the Chief Justice of Canada felt constrained to interject and say, "I think you are being too hard on yourself." When it comes to openness and frankness, I think Mr. Watt set a very high standard.

**Mrs. Campbell:** You look at a case like that and you recognize the two families involved and the rest of it and how circumspect we are there, and how circumspect we are in other cases. I do not know what can happen in a case like that, to both families.

**Hon. Mr. McMurtry:** The victim's family is my principal concern. The defence counsel was in a position to press the matter. He was content—and I am not criticizing him—to let the matter sit. He was in no hurry to get it on and he certainly was in a position to press the matter. The victim's family is something else again. Obviously we feel very concerned about the unnecessary emotional burden this places on them.

**Mrs. Campbell:** I think about another family which has suffered emotional burdens.

**Hon. Mr. McMurtry:** Are you referring to the case we were discussing earlier?

**Mrs. Campbell:** Yes.

**Hon. Mr. McMurtry:** I'm sorry. I thought you were talking about the accused and his family.

**Mrs. Campbell:** No, I was speaking of another family.

I now want to turn to this article—and this is an article, although I have followed through on it; I am raising it as a result of the article—in the Toronto Star of April 26. There is an allegation that two accused, in

effect, were forced into perjuries. I am not interested in what is going on in a matter before the courts, but I am concerned—

**Hon. Mr. McMurtry:** Forced by whom into perjury?

**Mrs. Campbell:** It would appear, from this article and from the subsequent information I have received, by the crown prosecutor. I wonder to what extent we are going if that is properly under the plea-bargaining system. To what extent are we prepared to go in the plea-bargaining system, if that is part of it? The case was not heard in Toronto, although the present case is being heard in Toronto. I believe, from the information I have, that the crown and, in a rare kind of procedure to me at least, two defence counsels have been subpoenaed as witnesses. I suppose there is very little one can do until the case is decided, but I am worried about this kind of allegation and whatever is coming out of the trial as it proceeds.

**Mr. Lawlor:** At what level is the trial?

**Mrs. Campbell:** It is a trial involving a third party, and in this case the two defence counsels who had acted on behalf of the people who have already been disposed of were called to give evidence.

**Mr. Lawlor:** Is this in the sessions of the Supreme Court?

**Mrs. Campbell:** I believe it is in the Supreme Court. I have particular concerns in this case which I would like to address to the Attorney General privately, but the alleged circumstances are that one person was regarded as, in the vernacular, the "hit man"; another person was regarded, I suppose, as an "accommodation" person and there was an effort to obtain evidence with reference to a third person. This is alleged to have happened.

I am not at all concerned about what is going on in that trial—that is none of my business—but these members of the bar have been subpoenaed to deal with the questions of what transpired. It seems clear that in one case the two charges, for instance, might have been manslaughter and conspiracy. In both cases while it was stated that the crown accepted that those were the proper charges, murder charges would be proceeded with unless evidence were given to implicate a third. If that is the straight story, would the Attorney General not feel it is something he should look at?

11:10 a.m.

**Hon. Mr. McMurtry:** All I can say, Mrs. Campbell, knowing just a little about the matter, is that perhaps you and I should

sit down and review it, because I would like to know more about the circumstances.

**Mrs. Campbell:** I particularly want to review it in the light of other circumstances surrounding this particular case.

The other matters I have I think I must not go into at this time. They are still before the courts. They are cases which raise very grave questions in my mind, but I think I will leave it at that for the moment.

I trust I have raised in fairly explicit terms some of my concerns about the activities of the crown. I would hope the Attorney General would find some time to review just where we are going as far as the crown is concerned. I reiterate, I have a very great uneasiness that our crown attorneys, not by deliberation—I don't believe that for a minute—but by custom are falling more and more into the law enforcement end of the criminal process.

I guess I have never liked the American system. Perhaps that's my bias. I don't like it. I don't think the crown should be involved in that game. Perhaps we may disagree on that, I don't know. To me there has to be someone who stands somewhere objectively in the middle some place. I thought that was our tradition. I do not see it as a continuing practice.

**Hon. Mr. McMurtry:** I would like to comment on this, Mrs. Campbell, because I believe we have developed in this province a crown-attorney system of exceptionally high calibre, a crown-attorney system which is very much aware of the traditional role to look at each individual case objectively and in no way be sort of a handmaiden for the police. I think the calibre of our crown-attorney system is, for example, demonstrated by the interest of the former Attorney General of England, who travelled to Ontario to confer with us over a period of several days because of the reputation our crown attorney system had earned, which had come to his attention, with a view to implementing a similar system in England.

Obviously, we must always be alert to situations where crown attorneys don't perform according to the best traditions of the office. We are always interested in cases where defence counsel feel there has been a departure and we are very happy to review them.

Over the last several years, under the director of crown attorneys and his deputy director, we have developed a very close consultative process with our crown attorneys through our regional crown attorney system. The regional crown attorneys from the eight areas of the province meet at least once a

month, sometimes more often, in Toronto with the director and deputy director of crown attorneys and others and often the Deputy Attorney General and myself. They, in their turn, meet with the crowns in their region.

I have to tell you, as I travel about the province, while I do receive complaints from time to time about the conduct of a particular case I receive more complaints from the police than I do from the defence bar. I don't know that that is illustrative of anything because I haven't attempted to do any sort of comprehensive survey. When I say complaints from the police I mean police sometimes don't think our crown attorneys are vigorous enough in their prosecutions.

I don't want to be misunderstood; I don't hear a great volume of complaints from either side. As a matter of fact, I hear very few complaints from either the police on the one hand or defence counsel on the other hand. Considering the enormous volume of cases the crown attorneys handle in this province I think this is an illustration of their high calibre of conduct and the standards which they maintain. Defence counsel throughout the province often make it known to me that they think the crowns are very fair and are maintaining the traditions of the office that must be maintained.

That's not to suggest that there are no problem children in any large system and that we don't have concerns from day to day about the conduct of individual crown attorneys particularly. The crown-attorney system has grown greatly and there are a lot of young people in the system and occasionally they can demonstrate a certain over-zealousness that is of concern.

You and I talked privately about the conduct of a particular assistant crown attorney that I told you I found nothing less than shocking. These matters do arise from time to time. But, on balance, I really believe we do enjoy a high quality of service in this province from our crown attorney system. That is not to suggest that we in the Ministry of the Attorney General at 18 King Street East will not remain vigilant—and we must, of course, to maintain this high quality and to straighten out the problems, human and otherwise, that do exist in the system.

I have to tell you that on balance I am very proud of the quality of service that has been given to the public of this province by our crown attorneys.

**Mr. Vice-Chairman:** Do you have a supplementary, Mr. Lawlor?

**Mr. Lawlor:** Just a word on that, in line with what the Attorney General was saying. What has fairly amazed me over the years are the very few instances which we have had before us in estimates of complaints against crown attorneys. Considering their job, considering the line-up outside the office at 9:30 or going into 10 o'clock in the morning, the stress under which they operate, the real possibilities for antics of various kinds and for overreaching, it's quite an amazing system that you have there.

11:20 a.m.

These crown attorneys handle 1,600 cases apiece on the average, according to your statistics. That's a very heavy work load and there is no sector of your system that is so much under stress. It is impossible not to produce the odd aberrant behaviour, and I'm sure it does, but I see the minimizing of that effect. Where it's possible to praise I think we should go a little distance. It gives me a little joy on occasion to do that and I think they deserve an accolade.

**Mrs. Campbell:** I think the fact that what I have produced are specific cases—they are not all yet produced because some would be so identified that I can't do it—in itself indicates these are cases that merit our concern. I don't think I have at any time referred to the crown as a mess or the administration as a mess, but I think these matters should be of concern because implicit in these kinds of things there is the public involvement.

As I said before, if the public doesn't have confidence in the system, the system will not work adequately in my view. I think it is always that approach I have in trying to correct some of these matters. I can remember when I was at Metro making some remark about the crown at city hall as well as the police at city hall and I felt they should be rotated because it got so that I couldn't distinguish one person from another. I had a call from the crown and gave him the instances at that point. I wonder if the Attorney General remembers one crown attorney at one time by the name of Fred Malone?

**Hon. Mr. McMurtry:** A classmate of my father in high school.

**Mrs. Campbell:** I went to see him by appointment as the president of the women's law association. As I went into his office he opened a drawer, drew out a firearm—don't ask me what it was—and informed me it was always his position to make it clear to anybody coming to see him that he was armed. It was shocking. A weapon of any kind like that was anathema to me and I felt he had



been around too long at that stage. The crown I called to complain said, "Oh, I understand" and shut up after that.

I think I have nothing further, except it has been drawn to my attention that we do seem to have some rather peculiar problems with the crown in Toronto. Are we having quite a turnover of our experienced crown attorneys in Toronto?

**Hon. Mr. McMurtry:** There has always been a turnover to some extent. I will ask Mr. Takach to address this more specifically because he is much more knowledgeable of the details and numbers, but certainly it has always been the view of many graduating lawyers that the best possible experience in so far as becoming knowledgeable and skilled in the conduct of criminal law practice is concerned is, of course, work in the crown attorney's office.

There are a number of crown attorneys, young men, who seek employment and are hired with the intention—they may not state it at the time—of working in the crown attorney's office for five years or more with a view to going into their own practice. When we hire people we don't—to my knowledge at least—extract any commitment for lifetime service.

**Mrs. Campbell:** A lifetime of celibacy.

**Hon. Mr. McMurtry:** When you look at the number of outstanding defence counsels around the province who have served as crown attorneys, I think one could argue that the whole practice of criminal law has benefited from the fact that there has been a certain turnover. But in my personal experience of 22 years at the bar, there seem to be many more crown attorneys now who are looking at the job as a lifetime commitment than there were 10 or 15 years ago. I think that's healthy, too. So we do have a good balance in the system between experienced crowns and the younger crown attorneys. I am not unhappy about the mix of those who are making it a long term career and others who are not. Mr. Takach, you are more knowledgeable of the figures of—

**Mrs. Campbell:** I was referring specifically to experienced crowns as opposed to those who are younger and might be expected to move on.

**Mr. Takach:** No, I think the turnover of experienced crowns is not significant at all. I forget the exact number we have lost in York this year, but very few. When you take into account the fact they leave for various and many reasons, some retire—I am talking about the province in general—

**Mrs. Campbell:** One expects someone to retire.

**Mr. Takach:** Some have the good fortune to be appointed to the bench. Some decide to move out of the province and to take up crown work elsewhere. We have lost through the system a few people to provinces such as Alberta and British Columbia. And then some decide to go into private practice for remunerative reasons, quite frankly. It has never been the case that the government has been able to pay according to what one would make in private practice. Considering all those reasons, I would say the turnover, not even limiting it to experienced crown counsel, but having regard to crown attorneys within the system as a whole, is quite insignificant. Far fewer today than, say, three or four years ago.

I expect the fact there are 1,000 graduates being called to the bar every year has a fair amount to do with that. It may not be quite as easy as it once was to set oneself up in private practice or to establish a private practice. But, as the minister has said, there is no question about it that at this point in the system we have far more experienced crown attorneys as a percentage than we have ever had, simply because a greater number of individuals are looking towards their positions with the ministry as a career, as distinct from being a stepping stone to something else.

**Mrs. Campbell:** And how many do we have—what is the word for them, occasional?

**Mr. Takach:** Part time?

**Mrs. Campbell:** Part time in this area?

**Mr. Lawlor:** We have \$1.32 million worth.

**Mr. Takach:** Right.

**Mrs. Campbell:** I know we do, but I wanted it in this area. I continue to think the Attorney General ought to stop that practice. It's more costly than employing people full time. But I don't know whether that is true in York. I know it has been found to be true in other parts of Ontario.

**Hon. Mr. McMurtry:** What I have said before still stands.

**Mrs. Campbell:** You agree with that.

**Hon. Mr. McMurtry:** I agree with you. It is a battle. Our situation has improved inasmuch as we have added people to the system during my tenure; the complement has increased; but I would like to see fewer part-time crown attorneys and more full-time crown attorneys.

**Mrs. Campbell:** How many are there here? In York.

11:30 a.m.

**Mr. Takach:** In York specifically? I don't know whether we have it broken down into how many there are for the judicial district of York, but I can tell you there are over 400 throughout the province. The exact proportion in York I am not sure of at the moment, but I can certainly lay my hands on that figure, if you would like to have it.

**Mrs. Campbell:** I am interested. I don't know why I had the impression we were more fortunate here in having the full-time crowns, but it was brought to my attention that I was living in a fool's paradise if I thought that was the case.

Can you not make the point with the powers that be in funding that it is costing you more, because that seems to be the indication on the figures that have been broken down year after year as we looked at them? Quite apart from the importance of having people full time on the job, I would think, and perhaps the gentlemen are less emotional than I am, it would be a constant irritant to a full-time crown to have part-time crowns around.

Secondly, I would think the commitment to the cause of criminal justice must be greater in those who are dedicating their full-time services to it. If you want to change the system and can establish that it's costing you more, I would have thought this government would have been dancing like the fiddler on the roof to get you the kind of service you need for less money.

**Mr. Kerr:** Is that true? Are there any figures that indicate whether or not it's costing you more for part-time crowns? I suppose it's hard to gauge.

**Mrs. Campbell:** It happens year after year.

**Hon. Mr. McMurtry:** We know what our bill is for part-time crown-attorney assistance every year. If we were to translate that amount into full-time jobs, I think it would be a more efficient system. I can't be specific about the actual financial savings, but for the same money we would have a more efficient system. I certainly will make that statement.

**Mrs. Campbell:** I didn't bring that material here. I have used it, it seems to me, year after infernal year. But it was clear to me that in certain areas the part-time crown was receiving more in actual per diem, or whatever you want to call it, over the year than the full-time crown. I thought that had been established or I would have brought the figures here to indicate it.

I can't understand it. If ever there was a time and a need in our history for the full-

time commitment, this is it. I don't understand the philosophy.

**Hon. Mr. McMurtry:** I have made my position clear. At the same time it would be unfair not to state that a number of part-time crown attorneys do represent Her Majesty in a very effective and fair fashion, in other words, do a good job.

**Mrs. Campbell:** I wasn't denigrating the part-time crown attorneys.

**Hon. Mr. McMurtry:** I was a part-time crown attorney for 10 years and I always felt I brought a great deal of commitment and—

**Mrs. Campbell:** But you were exceptional, no doubt.

**Hon. Mr. McMurtry:** —was very conscientious in my approach, given the importance of the responsibility.

**Mrs. Campbell:** I didn't raise it to denigrate anybody. I just felt the system requires the full-time effort. I am always puzzled, if our figures are correct and I thought they had been accepted by various Attorneys General since I have been here, as to why you can't make the point.

**Mr. Sterling:** Mr. Chairman, is it not a problem in some of the areas, like the area I represent, where there are great distances between where courts are sitting? For instance, if the courts only sit in Prescott on one morning a week and sit in Kemptville every second or third week, in order to have a full-time crown in that community you would have a man covering an enormous territory so I imagine the part-time crown is justified in that kind of situation.

Also in expertise in prosecuting a certain area where you have a very difficult case, sometimes a part-time crown is also justified. I would imagine too it is sometimes difficult to obtain a good experienced crown at a particular time during the year to come on-stream in a jurisdiction. Those are all arguments for retaining part of the part-time crown.

**Mr. Kerr:** I think the scheduling of sittings too would have to be changed substantially unless you plan to hire a lot of new full-time crown attorneys. In other words, in many cases I would think you would have court starting at two o'clock in the afternoon instead of at 9:30 in the morning, because it would be impossible for a usual full-time staff to service all the various courts in a particular region.

**Hon. Mr. McMurtry:** There is no question that the part-time crown attorneys have, as both Mr. Sterling and Mr. Kerr suggest, an important role to play. But I would like to

see more full-time crown attorneys in the system than we have. I would like to adjust the balance somewhat.

**Mr. Lawlor:** My only comment—I had it down too—is I don't think we object to part-time crowns as such. Particularly, it is understandable in rural areas and in the odd case.

I think the only thing I would add to what we have said over the number of years is it is still a fairly large sum of money and should be absolutely minimized. This is the indication of your answer a moment ago, that you are cognizant and seeking to keep it within very confined bounds. All we would do is urge you to do that.

Certainly to have a full-time crown is, in my opinion, infinitely preferable as you say. Not only in this area but in a second area which I will bring to your attention. What you are doing in some courts is that the crown and the court remained seized of a particular matter throughout. That is increasing practice. On the basis of what I have read that is paying dividends. There is an acceleration of cases; they are handled with greater adroitness; they are pursued to their termination; and a greater fullness and justice is done in the individual case. That practice should be encouraged.

**Mr. Kerr:** You are going to have to consider taking one of the hats away of a particular counsel. The Attorney General knows you have from time to time people who spend a great deal of time in court acting for the defence who also are acting crown because they are basically specializing in that field. It's not uncommon for one person to be a defence counsel in the morning and part-time crown in the afternoon.

11:40 a.m.

**Mrs. Campbell:** Not on the same case, obviously.

**Mr. Kerr:** No, they move to another courtroom. It may be that you will have to limit that to some extent, although that will annoy all of the defence counsel if you do that.

**Mrs. Campbell:** Mr. Chairman, I wonder if I could just ask for some comment? What in the world is happening in Kingston? At the conclusion of the article it says: "John Takach, director of crown attorneys in the Attorney General's ministry, could not be reached yesterday for comment and did not reply to a telephone request for an interview."

This flows out of the comments that John Sampson, crown attorney of Frontenac county, allegedly said in an interview that he does not have the staff to provide a prosecutor regularly for the juvenile court. "You can't

do anything over there," Mr. Sampson was alleged to have said of the juvenile court. "The offenders walk out of there and laugh all the way home."

Also in the article it is alleged that Judge Naismith said, "Only a few juvenile courts in Ontario have trained prosecutors regularly assigned to them." I presume that is correct. He said, "The Ontario Family Court Judges Association approached the Attorney General's ministry about the problem last year but has not been given any assurances."

I would like to have some comment. I note Mr. Sampson says the police should be capable of prosecuting all but the most complicated cases in juvenile court. As I recall, and of course times have undoubtedly changed, there was no force in Kingston such as youth bureau officers in this area, who I must say were excellent in that role, but there is a very great dichotomy in the attitude of the police officer in the prosecution of a juvenile unless he has had the youth bureau experience. On of my greatest embarrassments was an early case where a regular police officer had laid a charge. The difference was quite clear as between the regular police officer and the youth bureau officer.

What is happening in Kingston, if Mr. Takach could now be reached for comment?

**Hon. Mr. McMurtry:** He is always prepared to have an interview with you, Mrs. Campbell.

**Mr. Takach:** I think the article was a rehash, if I may put it that way, of an article that had appeared two or three weeks earlier in a Kingston newspaper. I spent a substantial amount of time with that newspaper reporter as well as Judge Naismith and Mr. Sampson about the matter and I am happy to report that the problem, if it was a problem, has now been taken care of. I think to the extent that there was a problem it was a combination of a number of things, including lack of communication between the crown attorney's office and the police department.

Mr. Sampson will be staffing the juvenile court as it is required. He will either be arranging with Judge Naismith to make a crown available for a half day a week—which I have been told by Judge Naismith would be sufficient to take care of all cases in which a crown attorney is required in court—or he will be making arrangements with the police to be notified of all Criminal Code cases, or at least all serious Criminal Code cases.

As you are aware, there are some cases even in provincial court (criminal division) which



do not require the intervention of the crown. But I agree that by and large it is quite inappropriate to have police prosecuting the juveniles. Notwithstanding the particular expertise the youth bureau officer may have acquired, it just does not give the appearance of a division between the investigatory authority and the prosecutory authority. Mr. Sampson is quite aware of our feeling with respect to that. In fact, he shares it. He has always shared that view; that it is not appropriate for the police to conduct prosecutions.

Unfortunately in that jurisdiction, as in many other jurisdictions, increasing demands are being placed on the crown attorneys to provide staff, either a full-time member of the staff or at least a part-time member of the staff, or some other member of the crown attorney's staff to handle these cases. As I say, it has been increasing over the years. I think there are a number of reasons to it, quite apart from any increase in volume that there may be.

One is an increased awareness of the fact that proceedings with respect to juveniles should be handled in the same way that a prosecution in provincial court is handled. By that I mean the juvenile should be afforded the same type of adversarial system. I had the opportunity of meeting with Judge Naismith and Chief Judge Andrews and Judge Beaulieu about this last fall. I suppose there is a difference of opinion between certain juvenile and family court judges as to the extent that that is true; in other words, to the extent that a juvenile court proceeding should, in fact, be an adversarial proceeding and should have—perhaps in a slightly different light—a good, vigorous prosecution.

I can remember when I first started out that most people regarded the rules of evidence in juvenile court as being somewhat more relaxed, that what the individual needed was maybe a good slap in the rear end and being told not to do it again. There were adjournments sine die, and this type of thing.

Gradually the procedure seemed—at least my perception of it, and I may be in error—to become somewhat more formalized and it is now more akin to a trial in provincial court. To the extent that is the case, there is an increased demand on the crown to provide a counsel who is going to be there to be a little more than what he might otherwise have been, or what otherwise could have been fulfilled by the trial judge himself or herself, or, for that matter, for a youth bureau officer.

That is part of the background as to why little problems like that develop in a jurisdiction such as Kingston. We have had that

difficulty in other areas; in other words, crowns coming to me, saying: "Look, I just don't have the bodies to put into court. All the part-times are busy. I have a staff of five and we have five jury trials. What am I going to do?"

**Mrs. Campbell:** Anyway, family court is the bottom of the heap.

**Mr. Takach:** Unfortunately, in the past both defence counsel and crown counsel would tend to look at it that way, but I am confident that attitude has changed and crowns throughout the provinces realize that what, in fact, takes place in juvenile court may, in the long run, be far more important than the prosecution the crown is doing the next day in provincial court, where it is a youthful offender, a 16- or 17-year-old who perhaps some time before did not have the benefit—if I can put it that way—of a strong enforcement authority in the juvenile court.

So there are problems that arise in manpower, but it is our policy—I have dealt with it with the regional crown attorneys at least on two occasions since the fall to remind them that it is our policy and the ministry's policy—to have strong crown representation in juvenile court in the appropriate cases, which, in fact, means the most serious cases, which involve a contravention of the Juvenile Delinquents Act or the Criminal Code.

11:50 a.m.

**Mrs. Campbell:** I am interested in what I think is a philosophical change, because my experience was, yes, we did have a full-time crown, but, for very particular reasons, when he died it was deemed we would have a crown at Jarvis Street one day a week and only for proceedings. I think it is useful to look at that in the family court. Certainly, when it comes to administration, I would point out to you that a part-time crown really cannot do much about the lists and the rest of things, as I think he ought to be able to do.

I never could find out who really set the lists. In that court I think they were somewhat happenstance. I do not know. But there was no judgement somewhere along the line as to handling a docket for a day in that court.

I think if you have full-time crowns they begin to work out a kind of system and understand better how things work. So quite apart from the role in the court itself a role in the administration is important.

But it is interesting that this article is dated in April of this year. Is it possible that Judge Naismith perhaps is somewhat con-

fused about all these arrangements you have made, because it seems very recent?

**Mr. Takach:** I doubt it very much, because I have spoken with him twice since late last fall and we appeared to be completely ad idem. I think what has happened is that since the time this article was written the matter was straightened out, if I may put it that way. I talked to the reporter in question, from Kingston, at least twice. I think on the last occasion I said: "Well, is there something new I don't know about? Have there been increasing difficulties?" He said, "Oh, no. That Globe and Mail article... was just the basis of what perhaps had been done before."

Since then I have had articles given to me from the Whig-Standard indicating that a crown, in fact is appearing in court; sort of a recap of what had taken place before, but indicating that crown counsel is now present. I have spoken with Mr. Sampson at least on three or four occasions and I am assured he will make every effort to ensure that cases do not go unrepresented by the crown or unprosecuted.

I am confident there will be no further instance of a crown not being available. It will take substantial effort on Mr. Sampson's part. Because, as he points out, he has other responsibilities as well. It is a matter of balancing those. But even if, from time to time, it has to be a part-time assistant crown, then that is at least a step forward.

As you point out, it is far better to have not only a full-time crown but a full-time juvenile court or family court crown. Naturally that is not always possible in some of the smaller jurisdictions.

**Mrs. Campbell:** It was not possible in Toronto, which is hardly a smaller jurisdiction.

**Mr. Takach:** It is now, as you know.

**Mrs. Campbell:** Yes. I am delighted that that is so. It was a battle waged.

**Mr. Leal:** We are not entirely out of the woods on this one, Mrs. Campbell. As you are very well aware, the principle of drawing the distinction between the adjudicative function with regard to juvenile delinquency on the one hand, and the dispositive function—what you do with that individual after "guilt" has been established—that dichotomy is not accepted universally, I want to tell you. We still fight that battle on a daily basis.

**Mrs. Campbell:** I am sure you do.

**Mr. Leal:** It is dying hard. Fortunately it is dying, because I think that is right; these people obviously are entitled to a good, legal

defence. It is only after you have established guilt within the framework of the legislation that you justify a disposition of the case more in tune with the fact it is a juvenile with whom you are dealing than an adult. We haven't been astute enough, not only in this jurisdiction but right across the country, to draw this dichotomy and to act on it. It still causes problems.

**Mrs. Campbell:** We had in our courtroom when I was there one beautiful crown counsel. Mr. Hoffman was a man who pursued the matter vigorously to establish his case. He scared me to death the first time I met him because, I thought, coming from the criminal courts one was really going to be in trouble. But he understood his role very well in, having completed his case, making some very sound recommendations as a result of that. I felt he was exceedingly able to distinguish the two aspects of his role.

I seem to be carrying this. I don't know whether anybody else has anything at this point. If not, I would like to refer you again to an article in the Wingham Advance-Times of April 16, 1980.

**Mr. Lawlor:** May I interrupt for a second?

**Mrs. Campbell:** Sure, come in.

**Mr. Lawlor:** How much time do we have left?

**Mr. Vice-Chairman:** Four and one half hours, Mr. Lawlor.

**Mr. Lawlor:** That's enough, okay.

**Mr. Vice-Chairman:** We have \$100 million left to carry. We have carried about \$40 million so far.

**Mrs. Campbell:** I think this is still the correct vote, but it does relate to something that puzzles me and that is the action of a provincial court judge for Huron County. The article states he has made adjustments to the procedure for handling certain types of offences under the new Provincial Offences Act, changes which should please local police: "A judge announced last Friday he is eliminating the option of an out-of-court settlement for all minors charged with a liquor offence, as well as for persons charged with creating excessive noise. Persons charged with these offences will not have the choice of signing the guilty plea and forwarding the fine to the court but must appear before a justice. Fines will then be set at the discretion of the justice."

I can understand something of his philosophy, but I wonder how appropriate it is, having in mind the purport of the Provincial Offences Act.

**Mr. A. Campbell:** I wonder if I might see the complete report?

**Mrs. Campbell:** Yes, sir. There are two parts. The first part is the police discussion.

**Mr. A. Campbell:** There is a provision in the Provincial Offences Act in the rules made thereunder, as you are aware from your experience in the committee that produced the legislation—

**Mrs. Campbell:** Legislation which worried me from the start, I must say, as you know.

**Mr. A. Campbell:** Well, there is a power to set an out-of-court settlement. I don't quite understand the newspaper report—

12 noon

**Mrs. Campbell:** Neither did I.

**Mr. A. Campbell:** —to which you referred from the Wingham Advance-Times of April 16. As I understand it, generally speaking the set fines throughout the province were to remain pretty well the same as before. There were a few areas where set fines for particular offences—excessive noise is one, liquor offences are others—were much above what they were in other parts of the province. One would find, with a number of liquor offences, the out-of-court settlement throughout the province generally would be \$38. In a few areas it was \$105. When the chief judge went over the set fines to pour the existing set fines into the Provincial Offences Act, he introduced a degree of uniformity. This has caused some concern in those areas where the out-of-court settlements formerly were quite a bit higher.

If, in any particular case, an officer or police force is unhappy with the amount of money specified by the out-of-court settlement, it's the easiest thing in the world for the officer, instead of handing the individual an offence notice, to hand him the summons under part I which would require a court appearance. If the individual got the summons and didn't go to court there would be a trial in absentia and the justice of the peace could impose whatever fine was appropriate.

The difficulty is that in some areas, in some cases, police forces want \$105 fines because they have problems in the summertime with what they consider to be unruly youths. The problem is that when there is a set fine, it's a set fine for all purposes. The question is whether it would be fair for somebody who was having a family picnic, where there was a bottle of beer on the table, to have to pay \$105 as an out-of-court settlement when everywhere else in the province it was \$38.

It is, to some degree, a question of sentencing discretion exercised by a judge. I would expect that within one half a year or a year, the experience of set fines would have to be renewed. It's one of the things we are keeping an eye on.

We know that some police forces are unhappy about the reduction in set fines in their areas. Generally speaking, the old procedure has simply been poured into the new Provincial Offences Act.

I have no direct information about the question of minors charged with a liquor offence no longer having the option of an out of court settlement and I haven't seen this particular report before, but I will look into it and report to you.

**Mrs. Campbell:** As I say, I understand something of the philosophy of the legislation. I think we have to look at that act and monitor it for a while. It's a new departure. I draw it to your attention for that purpose.

**Hon. Mr. McMurtry:** We agree, Mrs. Campbell, that there is a necessity to monitor it and I can assure you we are monitoring it extremely carefully because of the importance of the legislation.

Vote 1404 agreed to.

On vote 1405, legislative counsel services program:

**Mr. Lawlor:** I hope you don't take exception to it but this is one of my moments of dalliance, et cetera. We come to this vote and it always twigs certain terminological quirks in myself.

Mr. Stone is here, a man to be reckoned with and commended for the work he does in this House. The trouble with you, Mr. Stone, is that you always anticipate these things. I'm looking at a review article in *The Parliamentarian*, called *Legislative Drafting Technique in the United Kingdom*. I haven't got the exact date but I'm sure you do. It's a review of a book by G. C. Thornton called *Legislative Drafting*. It makes reference to the UK's Committee on the Preparation of Legislation chaired by Sir David Renton which reported in 1975 and sets forth on several pages techniques, various considerations that go into the drafting of legislation and gives a breakdown under heading form of a whole range of propositions. For instance, in statements of purposes within legislation the Renton committee recommends:

"(15) Statements of purpose: (a) should be used when they are the most convenient method of clarifying the scope and effect of legislation; (b) when so used, should be contained in clauses and not in preambles." That



part concerns me. I disagree with that and would like to know what you feel.

**Mr. Stone:** Our position has always been that they should be separate clauses and not in preambles. It is more certain what interpretative effect is given to a section than to a preamble, although basically it is accepted that a preamble can be resorted to for interpretation.

**Mr. Lawlor:** Over the years though you have tended to use preambles rather more than in the past.

**Mr. Stone:** No, our recommendation is always that it be done in a substantive section.

**Mr. Lawlor:** In other words, you seek to avoid the preamble.

**Mr. Stone:** Yes, we do. We don't always succeed, but we do.

**Mr. Lawlor:** The recommendation in the review article about short sentences will interest you, Allan.

"All the same the short sentence is easier to read than a long one, and the present writer adopted as a working rule that a subsection (unless broken up by paragraphs) should not exceed eight or 10 lines. Lord Denning in his evidence to the Renton committee thought sentences of even 10 lines were unnecessary." I think he thinks a sentence of even one word is too much. I just mention it in passing.

On the problem of definitions and reference the Renton committee's proposals were:

"(20) The number and kind of definitions included in a statute must in general be left to the draftsman's judgement, but the definition or expression by reference to another statute which is obscure or obsolescent should be avoided."

Do you take care to embody a definition in a statute rather than by way of reference to another statute?

**Mr. Stone:** Yes, our present and I think the most modern practice is to avoid as much as possible cross references of all kinds. It is particularly dangerous to incorporate something from another statute without being very sure that it is worded in the context of the first statute. It's very difficult to apply on a *mutatis mutandis* basis. But our practice now is to avoid virtually all incorporations by cross reference.

**Mr. Lawlor:** The Renton committee's number 23 recommendation reads as follows:

"Internal cross-references should take the form of precise references to numbered provisions, and in big acts may with advantage

include a parenthetical description of the subject matter of the provision referred to."

You don't make parenthetical references when you do it, do you?

12:10 p.m.

**Mr. Stone:** No, sir. It has occurred once or twice in the last two or three years. It has been an English practice. It is engaged in freely in England, but it has not been the practice here. Partly because it hasn't been done, I'm not that sure what value or emphasis or interpretative effect the brackets would have. It might be instituted if accepted.

**Mr. Lawlor:** Out on the side you give a description far more clear than most of the paragraphs in the legislation proper to the benefit of numerous souls in this House, including the lawyers. Do you use that medium as a way of pinpointing or making the cross-reference clear?

**Mr. Stone:** Not deliberately. Once in a while you don't want to use a popular expression in the text because of the uncertainty. But you can indicate subject matter with the expression in the side note; that identifies what you are really talking about.

**Mr. Lawlor:** In mathematical matters the recommendation is, "Increased use of fractions and other simple mathematical formulae is welcome." What is your practice in this regard?

**Mr. Stone:** I can't think of an instance in the statutes where there is a complicated formula that is an attempt to express it. It does occur frequently in the regulations for computation of welfare allowances and this kind of thing. We have used formulae for that on occasion.

**Mr. Lawlor:** It would be something to see differential equations.

**Mr. Stone:** We have nothing against it. It's a case of taking a particular case, and if it is clearer and easier to follow that way then we would use it.

**Mr. Lawlor:** Some people think the ideal thing is to reduce it all to mathematics. There is a comment here from Mr. Justice Rowlatt in the case of Lionel Sutcliffe Limited versus Commissioners of Inland Revenue. He made the following observation:

"This section 31 [of the Finance Act, 1927] is the section which in five pages introduced piecemeal amendments into section 21 [of the act of 1922]—five years previously—"with the result that the latter section is made perfectly unintelligible to any layman or any lawyer who has not made a prolonged study with all his lawbooks at his elbow, and it is

a crying scandal that legislation by which the public is taxed should appear in the statute book in that unintelligible form."

Do you get many complaints about your drafting, particularly in the area of tax legislation, which is the toughest?

**Mr. Stone:** No. I do not receive complaints myself. I might say that every jurisdiction is different in their style of drafting. The drafting I believe is a function of the expectation of the public and the practising bar, and the way in which the bench sees and applies the thing.

I don't want to speculate too much, but my impression of the English-style drafting is that it has arrived where it is by a traditional application of an expertise that has become a little bit insolvent. I have to agree with the remark that very often they stick to certain practices that make it very difficult to follow; they don't seem to be open to improving it or thinking along different lines. I think our style is quite different.

**Mr. Lawlor:** Would you care to try to describe the contradistinction between your approach and that of the English?

**Mr. Stone:** We try to eliminate the practices that make the English statutes hard to read. One thing is profuse internal references. Another thing is, "Notwithstanding something else, the subject is something else." We attempt to eliminate those. We cannot always do it, but we make a conscious effort to do that. We make a very conscious effort to keep the sentences short.

My own philosophy is that a draftsman can do that only if he thoroughly understands and has made a very hard-nosed analysis of what it is he is really saying. Then he can put it in a short sentence. When it gets complicated and turgid, he had better stop and go back and rethink out exactly what it is he is doing and wants to say.

**Mr. Leal:** It is always easier to write a long letter than it is to write a short one.

**Mr. Lawlor:** Or give a long lecture instead of a short one.

**Mr. Leal:** That's unkind, Patrick.

**Mr. Lawlor:** Probably my final question has to do with the Revised Statutes, 1980. How are they coming?

**Mr. Stone:** The timetable is to have them distributed around the middle of 1981. This year the commissioners will be making their first run through the statutes, particularly those that do not appear to be having any change. After the end of this session the product of this session will be incorporated into our update. They will have to go through

it again to take care of that after the end of 1980. So within the first six months of 1981 there will be this final update, the printing, which is a very large printing job, and the binding and distribution.

Along with that, we are attempting to have prepared a general index. The index will not be the same as we have had in the past, which has really been an index of each act as a table. If you look at the index book, you will see it starts with the Abandoned Orchards Act, or something like that, that there is an index to that. Then the next act has its index, and so on. This time we are hoping to put out a general index that indexes the whole body of statutes in one index, with the assistance of the Canadian Law Information Council, which has done a lot of work on that, and the indexing committee of which I am a member.

We were aiming to coincide and have that volume out around the same time as the other. We hope that index itself will be updated; then we can publish, each year, a cumulative supplement for distribution as well.

**Mr. Lawlor:** That sounds very good. I want to make a completely irrelevant remark. If, Margaret, you Liberals will hold off long enough, I may be able, before I depart this realm, to have a set of the statutes for my next decade in nonpublic life.

**Mrs. Campbell:** Mr. Chairman, certainly I cannot make a commitment to so serious a matter which has been raised as a surprise. But we would do anything, I am sure, to accommodate the member for Lakeshore.

**Mr. Lawlor:** Thank you very much. I am going to make a special overture to the Attorney General that I am entitled to that bloody volume.

**Mrs. Campbell:** Don't take it as a commitment.

**Mr. Lawlor:** Okay. In that regard, Norman Marsh, QC, in Case Law Codification Statute Law Revision, said: "The demand was orchestrated by a self-appointed body known as the Statute Law Society. They are making new arrangements with their revised statute. Their system is unfortunate in that the statutes are grouped by subject instead of chronologically, but it is an improvement in that the individual statutes are published in loose act form and can be reprinted regularly one by one as amended from time to time. In other words, where an existing act is amended textually, the public can expect to find the amended text, if it happens to belong to one of the subjects which have been published,

within a matter of months, instead of waiting for the publication of a complete new edition."

We do it differently here. But have you considered loose-leafing?

**Mr. Stone:** Yes. There has been quite a bit of experience in Canada with the loose-leaf system. A number of other provinces have done it. I think the net result of the experience is that a loose-leaf system is of some convenience to some people. It doesn't supplant the publication of the original bills or acts as passed by the House bound in a volume, for historical purposes. I think any law firm may want both, but the one they can't do without is the historical one.

**Mr. Leal:** That is particularly true of those engaged in legal education. The historical volumes are indispensable. A current loose-leaf volume is useless at that stage.

**Mr. Lawlor:** Yes. If you are doing it for that type of research.

**Mr. Leal:** Where did this come from? When was that change made? You can't get that from a loose-leaf.

**Mr. Stone:** The reservation that librarians have with loose-leaves is that it is too easy to have the leaves removed. It becomes unreliable.

**Mr. Lawlor:** I find the citator method not bad, you know. It works okay. Here is one final statement according to Thornton which I just happen to agree with. Listen to this, Eddie. "It is unrealistic to believe that laws should be drafted in a style which is familiar and instantly intelligible to the man in the street."

**Mrs. Campbell:** I wonder if I may have a couple of quick questions. I think one of them I had already discussed with Mr. Stone; it arose out of our bills in the House with reference to the revised statutes you are preparing now. I wondered if there were any way that we could arrange for some review—I asked you about it at the time—of some of the historical legislation, particularly as it does not appear in the revised statutes; whether there isn't a reporting system whereby you could, from time to time, recommend something about deletion of some statutes that are really no longer in effect. It seems to me to have law on the books that is no longer in effect is kind of a cluttering system.

**Mr. Stone:** In connection with that, Mrs. Campbell, one of the innovations I hope to make with this revision is to have collected, since 1867, every provision that is unconsolidated and unrepealed; to collect that in a

pile and have a good look at it. I think that probably we can sift that pile out into junk, stuff that is completely dead, deadwood; transitional sections in 1872 that are long since exhausted, and those things that may have an existing application of some kind, no matter how remote.

I would think then that the first pile could be put into a package for repeal in the House, if necessary. The other I would propose to list in a schedule which would be published with the revision, at least in reference to it. In this process, I would also be looking for something that was of general public application today. If there were something, then we would have the ability to move it into the revision.

**Mrs. Campbell:** I suppose if you did find areas you felt should be repealed, you would report them to the Attorney General?

**Mr. Stone:** Yes.

**Mrs. Campbell:** Then if it applied to different ministries, would it go out to them?

**Mr. Stone:** I think they should all be asked to have a look at it, because they are aware of the real situation and I am only speculating on whether or not there is some set of facts that they are aware of.

**Mrs. Campbell:** The other question: When an act provides for regulations and we have the reference to the Lieutenant Governor in Council, once that is there, I still have some confusion. It is between what I see happening in Ottawa and what happens here. Do you review those regulations notwithstanding, in their relation to the purpose of the bill? I am thinking, of course, specifically of the Family Benefits Act and the regulations under it, which regulations limit, in my submission, the general purposes of the act. It seems to me the attitude here is that, once you give that authority to regulate, then the regulations are in order. I wonder if I could just have a quick explanation, if that is possible.

**Mr. Stone:** I think you have to assume that if the authority is given it could be used.

**Mrs. Campbell:** For any purposes?

**Mr. Stone:** Within the interpretation of the authority.

**Mrs. Campbell:** But if it has a limiting effect, as the regulations in that case do, does it really come within the purpose of the bill itself?

**Mr. Stone:** That depends on the situation, how the authority reads it and what is done. In most of those cases, we have rules of interpretation as to how far you can go. The ministry really determines the policy it wants. The draftsman cannot change that or hold out



on it, other than by persuasion. If we cannot base it on lack of authority, then I think we are powerless.

**Mrs. Campbell:** I think that is part of the uneasiness of the opposition in incorporating that authority, because certainly in that case the act was not limited. The regulation, in fact, did prevent, for instance, a disabled wife from coming under the statute, which was not, I think, contemplated by any of those who were approving the legislation. I have always felt there should be a reference in this kind of a situation.

**Mr. Stone:** In an extreme case, I would feel justified in saying the House never intended that. That is one of the advantages for the draftsman of the bill. He sticks with the bill as it goes through the House and the committees, and then probably works on the regulation afterwards.

Sometimes it is not a strictly technical interpretation. He picks up on whether it destroys the intent of the members at the time the bill went through. I could only do that if I were very certain, of course, and felt strongly about it.

**Mrs. Campbell:** I can assure you that as far as both opposition parties are concerned,

it was never within their contemplation that the regulations should limit the general statements of the act in that way. It has been bothering me for some time. I have been trying to get it set aside. Short of taking it to court, I guess, I am stuck with it, but it worries me and now you have really increased my worry.

We had better not permit this clause to appear in legislation, or we had better have some kind of direction as to what the regulations can or cannot do. I do not know how you do that.

**Mr. Lawlor:** Just one final question on money. There has been a very considerable increase here from \$590,000 up to \$992,900. Is that all taken up with this statute revision?

**Mr. Stone:** Yes.

**Mr. Vice-Chairman:** I wonder if we can carry this vote.

Vote 1405 agreed to.

**Mrs. Campbell:** You are not doing your job, you know. The regular chairman keeps reading out, after we have carried the vote, what moneys we have carried in case the Attorney General should have any problems as to whether we carried the right amount.

The committee adjourned at 12:33 p.m.

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No. J-9

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General



**Fourth Session, 31st Parliament**

Wednesday, May 14, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, MAY 14, 1980

The committee met at 10:15 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

**Mr. Vice-Chairman:** I recognize a quorum. The member for Etobicoke (Mr. Philip) has a very urgent matter he would like to bring up with the Attorney General (Mr. McMurtry).

**Mr. Philip:** Yes, thank you. I appreciate the co-operation of the Liberal critic and other members of the committee for allowing me to go ahead of them and deal with this item.

No doubt the minister has read about the very brutal attack on Mr. Amir Din, a Canadian of East Indian origin, at 75 Tandridge Crescent in Rexdale. My understanding is that the people who attacked him did not live in the building. In fact, one came from Mississauga, the other from a townhouse in the vicinity and I am not sure where the girl came from. According to newspaper reports and other stories I have been able to obtain by telephoning some of the residents, Mr. Din was brutally attacked while trying to protect his family after these hooligans had first of all abused them verbally with racial taunts and then attacked him with a bottle, among other things.

This is a building about which I have expressed some concern to the Minister of Housing (Mr. Bennett) on numerous occasions. The security system has been cut back on that building. In fact, there are no security services. The minister has refused to deal with that. Indeed, on one occasion I asked him to meet a deputation of three people from the tenants' association—this was a couple of years ago—and he refused.

We maintain people who do not live in the building are going into that building and causing problems. That is what the residents are claiming. This incident seems to indicate that is the case. None of the people involved in the attack live in that building.

I know that as Solicitor General you are concerned about policing, and that as Attorney General you are concerned about the problem of racism. I was informed by people I talked to in the building this morning that while there has been vandalism and while there have been some fights and various things like that—suspected pot smoking, among other things—in the corridors or hallways, usually the incidents have not been racially motivated, as was the case in this instance.

I am also convinced the police are trying to do their best in this area. Indeed, whenever I have talked to Staff Superintendent Jack Webster, he has been tremendously helpful, particularly in dealing with racial incidents in the area. I don't think our area suffers from racial incidents any more than any other area, but the police have certainly been most co-operative in laying charges and in thoroughly investigating any incident I have brought to their attention. This is the first such incident I am bringing to the attention of the members involving this particular building.

However, there has been a problem of security, and I hope the minister will deal with his colleague the Minister of Housing, since I seem to be unable to convince him of the necessity of dealing with the whole problem of security in Ontario Housing Corporation buildings in general, and in this building in particular.

I also wonder if the minister has any information about what charges may be laid. In matters of violent crime I think we must make examples of people who commit these kinds of crimes. I am not suggesting that stiff sentences cure prejudice, but I think it has been demonstrated that they keep at least certain individuals from taking part in some of these incidents. If it doesn't affect their attitudes in any way at least it may affect their behaviour.

10:20 a.m.

The people in the area are very upset, and I would like to have an update on what has been done about this.

**Hon. Mr. McMurtry:** This matter was first brought to my attention, actually, by the press reports I read last night in the *Toronto Star* and this morning in the *Globe and Mail*. I must say at the outset that is the only information I have at the present time, but when I read the article last night I made a note to obtain further particulars because I found the account, and the facts alleged in the account, to be nothing short of shocking. It is almost unbelievable that any family could be subjected to that type of attack.

I assume this matter is before the courts because charges have been laid. In any such case, of course, the prosecution would be vigorous—fair, but very vigorous. If there is a conviction, and if the facts are established as related in those articles, then you can assume the crown counsel will press for very stiff sentences. If the fact is established that the motivation was racial, then, of course, that is a matter the court will take into consideration.

Members will recall the very tragic case several years ago of the Tanzanian immigrant who was pushed on to the subway tracks. The trial judge, in imposing sentence in that trial, recognized the viciousness of the attack, but he stated—quite frankly, to my surprise—that the fact there may have been a racial motive was not something he was going to take into consideration. I was very distressed by that and personally caused an appeal to be launched, indicating that in my view a racial motive would make such an attack, serious enough in itself, even more heinous.

I was gratified, of course, that the Court of Appeal agreed with our submission. In the decision given by Mr. Justice Dubin, as I recall, the Court of Appeal laid down very clear guidelines for trial judges in so far as sentencing in these matters was concerned, indicating that if there was a racial motivation in the attack that made the matter much more serious in the eyes of the criminal law.

As I recall the words of the Court of Appeal, it talked about such an attack being an attack, really, on the structure of society and as being much more “heinous”—and I think they used that word—for that reason.

There is no question that we take any such attack very, very seriously. I think my views are reasonably well known, and I restate them. I certainly will take a personal interest in this prosecution.

The matter of security, of course, is a difficult one. I certainly will take it up with

the Minister of Housing. It seems to me these buildings, even with good security systems, are not difficult to gain access to. I remember a famous campaign in St. George riding where I spent a lot of time in Ontario Housing Corporation buildings and there is no question that even with a fairly decent security system strangers can gain access to these buildings without too much difficulty.

In any event, I will certainly discuss the matter with the Minister of Housing and see if we can't do something to improve the situation in that building.

**Mrs. Campbell:** I wonder if I might just draw to the attention of the Attorney General that, in this case—and I don't know any more than anybody else about the truth of the matter—the crown—I don't know whether “disavow” is the appropriate word—did not seem to regard the racial aspect for the purpose of laying charges.

**Hon. Mr. McMurtry:** Do you mean the incident that has just occurred? As I understand the report, the arrests were just made. I don't think any crown attorney has even had an opportunity to review the matter, but I don't know.

**Mrs. Campbell:** On television they did say he had refused that charge. I just thought you might want to look into it, because the crown attorney was on television.

**Hon. Mr. McMurtry:** I wasn't aware of that.

**Mr. Lawlor:** Where will the case be tried, in juvenile court?

**Hon. Mr. McMurtry:** One account I read indicated there were three people charged. Two are not juveniles and they will be tried in adult court, charged with assault causing bodily harm. I'm not sure if there are any other charges. There was also one juvenile involved.

**Mr. Lawlor:** There seem to be two. Well, maybe. It says “youths,” and in the case of the young woman “a juvenile girl,” have been charged with two counts of assault.

**Hon. Mr. McMurtry:** Yes, that is the report I read, a juvenile female and two adult accused.

**Mrs. Campbell:** You can still be described as a youth when you are over 16, I think.

**Mr. Philip:** In fairness, Mr. Minister, Lewis Nickle, an officer attached to the ethnic relations unit of Metropolitan Toronto Police, has indicated that racially-motivated attacks are decreasing. That is my experience, and the member for St. George is nodding her

head to indicate it has been her experience as well. That doesn't lessen our need for vigilance when an incident like this does come up.

In one area of my riding, admittedly before I was elected, there used to be race riots. Since then we have put in a recreation centre, established ethnic committees and worked with the police through the community police officers. All of these things have done a great deal to reduce tensions in that area and we no longer have the kinds of incidents that occurred in 1973 and 1974.

Certainly the police are trying to do a good job and the more plain-clothes community police officers we get working in these areas the better it will be for us. They certainly are well worth every dollar we're spending on them. I realize that comes under the Solicitor General's estimates and I appreciate the chairman's not ruling me out of order.

Mrs. Campbell: I wonder if I could quickly bring up two matters. One is, in the light of the present situation, the Albert Johnson case which was raised by my colleague and friend from Riverdale (Mr. Renwick). I wonder if it would be possible for the Attorney General to make available to me the Ontario Provincial Police report on that case.

10:30 a.m.

Hon. Mr. McMurtry: I will discuss it with you. I do not want to discuss it with you publicly at this point.

Mrs. Campbell: I understand that.

Hon. Mr. McMurtry: I think this is something you and I can talk about privately, Mrs. Campbell.

Mr. Lawlor: I am not personally involved in this, but may I ask if my colleague Mr. Renwick, who has a particular interest in this, may join you on that?

Hon. Mr. McMurtry: Yes.

Mrs. Campbell: If he doesn't disavow it.

Hon. Mr. McMurtry: I am not undertaking to discuss the report with you at this time; I will take that request under advisement. As I said, I have some concerns, but, in any event, we can discuss it.

I was not prepared to take Mr. Renwick's suggestion under advisement because I thought it was totally without merit.

Mr. Lawlor: Our information is quite to the contrary, I can assure you.

Mrs. Campbell: I cannot form conclusions without having facts, so I am seeking facts.

Mr. Lawlor: That is why we want to see the report.

Mrs. Campbell: With regard to the other matter, I did speak privately to your deputy minister at the last meeting about how we are approaching a report on the meeting we had. I have deliberately refrained from making any comments. That is one of the things that bothers me about going into private meetings. But I wonder if there could be a joint report issued indicating the steps contemplated as a result of that meeting, firming up the committee, and so forth, so that there could be some follow-through to the concerns I expressed in the matter of the courts and the domestic violence situation.

I do not know whether your deputy has had an opportunity to discuss my request with you, but I would like to have an answer on that subject.

Hon. Mr. McMurtry: It was my understanding that a liaison committee was being established between the practising bar and the ministry to monitor the situation and perhaps to work out improvements in the overall system.

Mrs. Campbell: I understand the police would also have a representative.

Hon. Mr. McMurtry: Yes.

Mrs. Campbell: The thing that bothers a lot of people is that so often a committee is formed and then one never hears of it again. What I had asked specifically was whether we could be assured there would be a permanent staff person assigned for the duration of the committee and whether there would be a budget for this committee. I think it is important it be established on that kind of basis, to give us all confidence that it will be going forward and that the work will proceed.

Those were the two questions I put to your deputy.

Hon. Mr. McMurtry: Do you mean a staff person from the Ministry of the Attorney General?

Mrs. Campbell: Yes.

Hon. Mr. McMurtry: Oh, yes, we will have someone assigned to the committee. Quite frankly, Mrs. Campbell, I have not had a chance to reflect on matters such as budgets and what not, other than to say that certainly we are committed to making this approach work. If there is any funding that will be of assistance to the work of the committee, I am sure it will be available.

Mrs. Campbell: I think we need more than just a member of the ministry staff; I think we need a secretary. You will recall I asked that minutes be taken and that I be given them. That way we would have some kind of monitoring of just what was going on, so that



the committee would not be lost to us in some never-never land.

**Mr. Leal:** There is no difficulty about that. I assure the member for St. George that the ministry will provide a secretary. Mr. Allen Shipley, who is in our policy development branch, will be that person. The ministry's representative is Mrs. Karen Weiler.

**Mrs. Campbell:** That couldn't be better.

**Mr. Leal:** I have heard from Ms. Geraldine Waldman, who was one of the family law practitioners in attendance at that meeting. She has given me the names of two of the three family law practitioners who have been designated by the family law subsection of the Ontario branch of the Canadian Bar Association. They still have to indicate the third name. Our people have met with Deputy Chief Noble and we are now in the process of settling the matter of the police representative on the committee. A meeting will be called as soon as the complement is fixed.

We are aware that minutes will be circulated. They will be kept and circulated as requested. We are hoping that meeting can be held in the immediate future.

**Mrs. Campbell:** Thank you very much.

On vote 1406, courts administration program:

**Mrs. Campbell:** I want to yield briefly to my colleague who has some urgent matters relating to, I believe, the Windsor court.

**Mr. Ruston:** This has been an ongoing problem in Windsor, Mr. Minister; the tie-up in the courts. I was just looking back over some newspaper clippings and files I have, and I have some from as far back as 1978. This article appeared in the Windsor Star on May 8, 1980:

"The gravity of the situation is beyond dispute. W.E.C. Colter, chief judge of the province's county court system, has said, 'The backlog of criminal jury trials in Windsor's county courts is probably the worst in Ontario.'"

I will just continue with two or three paragraphs: "It is common for a year to pass before a case is tried. Essex county crown attorney Brian McIntyre says: 'More than three years sometimes elapse before an accused is brought to trial. Such grim facts mock our system of justice. Trials are regularly held only when the memories of victims, witnesses and even the accused have become dim with the passage to time.'" It goes on.

I wonder if this has been going on for some time. In 1978, the senior provincial court judge at that time, Mr. Gordon R. Stewart apparently was blaming it on the

lawyers. I do not know who is to blame, not being involved in the legal system, but I was talking to my brother who was called to jury duty the other day. He was of the impression that the way they handled the number of jurors who were called and the few who were actually chosen was very inefficient. They wasted one day, were called back the next day, and then were sent home again. I think he said 100 were called one day and only 12 or 15 were picked.

Perhaps lawyers and judges are not good administrators. It would appear that may be the problem. What you may need is someone who has never been in law school at all, but who knows how to get things done. I don't know who that should be. Maybe it should be a businessman. But I am telling you, it gives the general appearance to a layman, a corn farmer, say, that there is something wrong some place. It takes three years for some cases to be heard. I am sure three years is the extreme. I know a couple of cases, and they were murder trials, where it had been three years since the murders occurred.

If there were a shortage of judges and courtroom facilities, it would be different, but it doesn't appear to be that from what we read in the newspapers and from talking to some of the lawyers involved. It really concerns me that this is the situation in our courts today, Mr. Minister.

**Mrs. Campbell:** We should bring back duelling so the people in Hamilton can duel with the people in Windsor as to which is the worst office.

10:40 a.m.

**Hon. Mr. McMurtry:** As I recall, I requested the federal government to appoint an additional county court judge there and I think we have made efforts to add a couple of county court courtrooms.

**Mr. Brian McLoughlin,** the director of courts administration, is with us at the moment. Can you assist us further, Mr. McLoughlin?

**Mr. McLoughlin:** Yes, Mr. Minister. We added two county court courtrooms at just about the end of last year and, as you have stated, a request has been made to add an additional county court judge, which should alleviate the situation to a great extent.

**Mr. Lawlor:** Mr. Ruston, you will have to speak to your friends in Ottawa.

**Mr. Ruston:** Well, maybe we'll have to do that, yes. We'll have to find some new judges who were former candidates, or whatever the case may be. You are retiring from politics:

I suppose you are open for the job. Maybe you have put in a word already.

**Mr. Lawlor:** I can think of worse things to do.

**Mr. Ruston:** I would make one qualification. I have been reading this. I want to say to the minister I don't always believe everything I read, but I have to assume it is the truth. I must admit it isn't always exactly true, as you know. But it really concerns the average individual when he hears of such things going on in our court system.

**Mr. Lawlor:** I want to deal this morning with the larger picture, which Mr. Ruston introduced in a local way, the whole picture as to how things presently stand. The minister has been good enough—and I think I will start there—to supply us with pages 74 and following in his brief, indicating what the picture was, and I suspect it hasn't altered all that much in the meantime, so, if I may, I will take a little while with you. Mrs. Campbell may interject any time she pleases, of course.

I am just going to run over some figures here. I am looking at the county courts, civil cases. The actions commenced in 1979-80 were approximately 36,200 and the dispositions—this is in York only—were 3,400. True, cases hang around and have to go through various motions and procedural things, but I just wanted to show the very large number of cases coming on, and consider what the prospects and perspective for this thing really are.

I would like to swing over for a moment to the summary conviction appeals. I won't dwell on this because I trust that problem with your new setup is going to be alleviated very considerably. On page 75, it indicates there were, in York, 4,700 cases disposed of in the previous year. Taking a look at the outstanding cases, the next item down, we see that they reached a very high point in 1977-78, 4,300, dropped by about half the following year and this year have dropped again. That problem of the prolonged sittings and the allocation of judges to that particular court in order to tackle what was amounting to an enormous case load has been substantially alleviated in any event, whether or not provincial court judges handle the appeals from the justices of the peace.

The totals given on the sheet for the county court are very considerable. The total in jury trials is 491 outstanding; in nonjury trials, 2,700; divorce, the Matrimonial Causes Act cases, 2,400; and the total summary conviction appeals outstanding, then, is

3,692. That is a heavy load of outstanding cases, which, when I come in a few moments to the other reports, will indicate just how burdened the courts really are.

Turning over to page 76 and the criminal cases, the number of general sessions of the peace cases remaining as of March 31 in York has increased considerably over previous years. There are 1,859 cases and, in the whole province, 2,790 cases. That's an increase of over 400 cases from the previous year, and in the previous year they were able to reduce it by a couple of hundred from the year before that. So it's mounting.

Those are the cases, with respect, that give one pause, particularly when one considers the situation of the Minister of Correctional Services (Mr. Walker) whose prime responsibility is to keep his costs down within the domain of his department. As these cases accumulate, a certain proportion of the defendants inevitably are going to be lodged in some jail pending the hearings. I trust we will come to the problems of the disposition and how that can be accelerated before we are finished with these matters.

The situation doesn't appear to be quite as bad in the county court judges, criminal court. In York there were only 87 cases outstanding at March 31, and throughout the rest of the province 483, so I won't go on.

That is the end of the statistics given to us, but I want to take you over, almost inch by inch, what I consider very valuable documentation which, unless the freedom of information legislation were not fully in effect, as, of course, it is, we would never have received.

Interjection.

**Mr. Lawlor:** Thanks, Margaret, for the laugh. The Attorney General looks glad.

What I'm referring to, of course, are the statements of the various chief judges and chief justices of the courts summarizing, as of three o'clock on January 7, 1980—I think we had better be very precise about these things. It all may have changed by four o'clock.

**Mrs. Campbell:** Even the Attorney General laughed that time.

**Mr. Lawlor:** Yes, we finally tickled him. Attorneys General must never take themselves too seriously.

On page three of Chief Justice Howland's report at that time, he said in an overall way: "As we enter the 1980s there is no sign that the increasing case load of all three levels of the courts is in any way abating this. Litigation is becoming more com-

plex, resulting in longer trials. The review of the work of administrative boards is on the increase." You're telling me.

Then, down in the next paragraph: "How are the courts dealing with the challenge of the increasing case load? I am pleased to report that they are just about breaking even." That is not true in all cases, as we shall see in a few moments.

Then he gives a list of what moves the Attorney General is making in this regard, and which I gave him some credit for on an earlier occasion: the opening of various courtrooms; the new courthouse in Newmarket with 14 courtrooms, two motion rooms, et cetera.

Perhaps in the course of these estimates you could give us some indication, some projection, with respect to this, as you just gave a moment ago with respect to the Windsor situation. It was very vague, but that wasn't your fault, as I understood it, that it was so vague. But there you are. Some burden is going to fall on you willy-nilly.

On page five, Mr. Justice Howland says: "At the opening of the courts in 1979, I stated that the most serious problem was the disruption of the provincial courts and the inconvenience to the public caused by the continuous adjournments resulting from the fixing of dates for trial only to find that counsel were unable to proceed."

**10:50 a.m.**

Certainly, adjournments are a factor in this whole situation. Judges from time to time clamp down; it's peremptory—I think is the word—and as we have discussed previously, it is difficult to make that stick. Nevertheless, I think more Draconian measures are going to have to be exercised, as in the British system to some extent. They are expected to provide a deputy or someone to substitute for them in the event, sometimes it's a junior law clerk briefed in, clued in to the thing. There is no reason why many of them can't handle it. They will be competent people in time to come. The experience won't do any harm. I think a considerable degree of toughness is going to have to be exercised in this regard.

Lawyers—I don't mention names but I know of cases where a lawyer plays with the court. He's notorious. There are a number of them, but the one I have particularly in mind this morning is notorious out in Peel; the ingenuity of the excuses boggles the mind. He's known by all the judges and they don't know what the hell to do with him.

There are numerous counsel like that. It's part of their amour-propre that they are able to manipulate the judicial system. It gives them a false sense of power and ties up their client, then they beat their breasts.

It's a funny thing about the establishment, they do close ranks when criticism is made, particularly the criminal bar. They say, "Oh, it can't possibly be us." Damn it, it is them to a considerable extent and they must come to recognize that and assume the responsibility of officers of the court for the efficient administration of those courts, and take pride in seeing cases brought on, not the present foot dragging that is exercised for self-interested motives.

At page six he says, "The second major problem is the multiplicity of interlocutory applications and appeals from interlocutory orders in the field of family law." Apparently that has mounted and is ongoing. I'm not quite sure why. We did such a superb job and in your drafting, unlike other legislation you produce from time to time, you have met the various contingencies.

I thought we tried to spell it out pretty well. I suppose it's with respect to those financial statements there had been some hang-up, but I thought you tried to obviate that to some extent in pre-trial. What the cause of all that is and whether it can be tackled in a way that will relieve the courts—it's a sweet way lawyers have of building up their fees by taking motions. There have been some famous cases in this province; they motion you to death. By the time you throw in the towel, there is a new motion in this morning and we are going to be tied up all the day after tomorrow.

**Mrs. Campbell:** Some famous cases have been tied up for years because of motions.

**Mr. Lawlor:** A famous man by the name of Duncan—

**Mrs. Campbell:** That isn't the only one.

**Mr. Lawlor:** As a young lawyer, he terrified me. "It's not another motion."

At page eight he talks about another matter and I will mention it in passing—it's not central to what I'm saying, but it's here. The business of the divisional court is the first point he makes there; that one judge can handle it. There is or has been a backlog and it is a mounting burden in that particular court as with these cases of administrative agencies coming on. The one judge can now handle it. He should get three times as much work done, I suspect. Maybe things don't work that way.

The third thing is the need for additional taxing officers in Metropolitan Toronto to



eliminate the delay in obtaining appointments for taxation; that's fairly notorious—the business of trying to get a date for taxation, to get on. Certainly there is justice denied in that particular instance. Someone has a monumental bill from lawyers—and again, I'm always appalled by lawyers' bills; maybe I'm out of date; maybe it's part of growing archaic.

When I see what they are charging for what I consider fairly simple matters: Issuance of a notice of intention to redeem or something like that, or in some foreclosure proceedings; a bill of \$500 for two hours' work. All you can tell them—and it doesn't work very well; Eddie Ziemba had this before us the other day—all you can tell your clientele or constituents is, "Go and have it taxed." Boy, then they go down, they try to get on the list and there is an inadequate taxing officer and taxing officers are pretty rough fellows at the best of times.

Thank heavens they are rough on some occasions, because the lawyer comes forward with some pretentious bill, which is all padded to blazes. He begins to strike out the thing; there is almost blasphemy outside the door. You are touching a nerve here that can become quite exacerbated. Anyway, maybe you could say a word or two about taxing officers and what the situation is on that.

That's a fairly good report by Howland. Then he has a further report on the Court of Appeal. He says in that report—I don't have a page number here—"Throughout the greater part of 1979 it has been operating on a current basis and appeals have been disposed of as soon as they were listed for hearing."

The situation, as I understand it, in the Court of Appeal is relatively good. I think possibly a more restrictive policy is being exercised by the court as to what they are prepared to hear and the time they are prepared to spend on hearing various matters.

Last year I expressed concern over the large number of unmeritorious civil appeals which have been brought to the Court of Appeal in which there is virtually no possibility of success. In many cases counsel misconceived the role of the Court of Appeal and were asking for it to retry cases. I'm pleased to note the number of civil appeals which were dismissed without calling on the respondent has fallen from 40 to 32. The number of unmeritorious civil appeals is still too high.

I don't know what rapport you have with the law schools of the province, whether you speak to the deans from time to time. Having in our room an ex-dean, I suspect

you avoid them scrupulously. However that may be, I would think the Attorney General's department ought to have a close ongoing relationship to the law schools, not just through the law society but in a direct way, and have consultations with them from time to time not only as to their curriculum—I mean find out what the blazes they are teaching—but the manner in which they are teaching it and more importantly what they are not teaching.

We hear a great deal about callow lawyers tying up the courts, particularly the provincial courts. If you talk to provincial court judges they will tell you much of their time is taken up with irrelevancies—irrelevant questions, et cetera, and with people who are making arguments that have no logical relationship. My opinion is that the law schools are tougher now in their training than they were in my day. That, God help us, was hard enough; therefore, you would think a better quality, a more precise intelligence, would be emerging where they could stick to a particular point without diversion, but that's apparently not the way it's presently working.

I think part of the problem is they are probably too legalistic. A little more humanity and a little less law probably can get the thing done because they bring every conceivable reference into the debate, splice participles, and balance on Occam's pins. Remember Occam's razor? That's what I shave with every morning. A multiplication of distinctions.

11 a.m.

There is a Talmudic law about all that stuff; I would like them all to become Hasidim. So speak to the law professors. It is up in your riding. You know all about these things, don't you, the Baal Shem and others?

Okay. Transcripts: "In the past, the number one cause of delay in connection with appeals has been the time required for the transcription of the evidence and other proceedings. There are 600 court reporters widely dispersed across the province. The results achieved by monitoring the completion of transcripts of all three levels of the court have been encouraging. The shorter transcripts are being received in the same month. At the end of 1979, there were only 26 transcripts which had been in progress for over three months and the number in progress for over six months was just over four."

That may be true in connection with this court.

**Mrs. Campbell:** Some over a year.

**Mr. Lawlor:** Yes, in other court levels. I think what they are doing is, because of the level of the court and the urgency of matters up there, they are probably producing them in good volume and with attention, but down below there are real hangups with obtaining these transcripts.

That brings me to what I mentioned earlier to you. You need not reply now but I would like to have your opinion with respect to the videotaping of trials. This is a contemporary device. We get not only the actual words but the very demeanor, which is about 50 per cent, at least, of evidence submitted to the court, and the whole pervading ambience and have that replayed to the Court of Appeal at the nodal points that are necessary in order to establish what is at issue. They are not retrying the case, they just want to get the greatest verisimilitude to the actual trial and what would be better than the actual trial?

I think there now may be some recalcitrance on the part of the judiciary, even in the Court of Appeal, to utilizing these methods. What it could possibly be I don't know, but just the basic anachronistic bent, so to speak. Somehow it disturbs the judicial serenity to have to watch a movie. Anyway.

Now we come to Gregory Evans—"Gregory the Bombshell." Maybe I shouldn't speak of judges that way, but they are human, like the rest, though we must be reminded from time to time.

**Hon. Mr. McMurtry:** Not to be confused with your friend, the philosopher, Gregory Baum.

**Mr. Lawlor:** Dear old Gregory. He is always off on some bloody tangent, you know.

**Mr. Vice-Chairman:** Order.

**Mr. Lawlor:** I don't know what he thinks he's doing. I think he is promoting sovereignty-association on Bloor and Yonge.

**Mrs. Campbell:** Ward seven.

**Mr. Vice-Chairman:** Order! We are on vote 1406 and Gregory Baum does not—

**Mr. Lawlor:** No, I just wanted to say one other thing. He had better watch the Pope, you know. I am thinking of Dryden. Gregory is getting more interested in politics all the time and that is dangerous.

**Hon. Mr. McMurtry:** Again, for the record we are talking of Gregory Baum, not the distinguished Chief Justice of the High Court of Justice.

**Mrs. Campbell:** Let's get back to him.

**Mr. Lawlor:** Why would you want to do that? I prefer doing what I am doing.

At page two of Chief Justice Evans of the High Court: "At present," he says—and this is in January 1980—"there are 103 civil cases throughout the province that have been on ready lists for over 12 months. Attached to this report are appendices in graph form"—which, by the way, I can't read; I will have to consult with you, Allen; tell me how to read those graphs—"showing additions to the list and dispositions of the civil cases exclusive of matrimonial for the fiscal year 1974 up to 1979 inclusive." They do show that the inflow of cases is considerably outdistancing the dispositions. I can read the graphs that much, I think.

At the bottom of the page he says: "The work of the divisional court has increased by 23 per cent in the past year. A limited number of judges will be scheduled to sit for extended periods. The continuity of personnel, the provision for occasional extra panels and the recent amendments to the Judicature Act permitting the hearing of various matters before a single judge should materially improve the present situation." We will see what happens there.

"An overall annual increase of 20 per cent is reported by the bankruptcy division." He doesn't say very much more about that. Hold on to your hats: Bankruptcies are on the increase in a big way, lamentably.

"The motions courts continue to deal with an increased volume of work, with Ottawa showing an increase of 200 per cent. Bail and wiretap applications have remained fairly constant. The number of adjournments in the Toronto motions court has made scheduling very difficult and has caused inconvenience to counsel prepared to proceed. Many motions are of little, if any, merit in the overall disposition. In flagrant cases, in which the obvious purpose is delay or the motion is unnecessary, the imposition of costs against the offending counsel personally should be considered."

I don't know about the imposition of costs in the criminal courts against counsel who are not prepared to proceed. That is fairly Draconian. It may be outside the ambit of your authority, but it is a matter that very well might be considered. If it costs \$50 to stand there and say you don't want to go forward, then it is kind of an incentive to go slightly forward.

**Mrs. Campbell:** Fifty dollars' worth forward.

**Mr. Lawlor:** I don't want to make the costs very high because you or I might be in that position some day.

Anyway, on page four it says: "Pre-trial conferences . . . will be scheduled on a more regularly structured basis in the coming year. Our experience in the civil field convinces us that a pre-trial materially shortens the length of trials, improves the quality of advocacy, and reduces the cost of trials for the litigants and the public. There does not appear to be any sound reason why the same benefits cannot be achieved in criminal trials if counsel will co-operate in a realistic assessment."

We have discussed this in previous years. You are trying in both the criminal and civil fields to get a working pre-trial setup. Certainly you can segregate the issues and pinpoint what is going to be dealt with. That would be very valuable.

I don't know whether Williston has come up. I was hoping he would be able to give some nostrums in that area that would streamline the whole thing and help out.

It goes on: "A dramatic increase in the work load for criminal trials has drawn judicial resources away from the civil cases ready list, with the result that the heavy case load built up has been avoided only by encroaching upon the judgement and deliberation time to an extent that cannot be reasonably maintained without impairment to the health of the members of the court and a decline in the quality of judicial performance. Continuation of this additional availability on a long-term basis cannot be expected." There it is.

"Lengthy criminal trials are no longer the exception. Their continued proliferation is a real and immediate threat to our system of criminal justice. Many factors contribute to this situation, including the increase in the number of conspiracy charges."

We talked about that before, too. Can't something be done about these conspiracy charges? It seems to me that when they feel they have inadequate evidence upon which to convict individually, they slap on conspiracy.

**Hon. Mr. McMurtry:** If I may just interject there, Mr. Lawlor, I guess my immediate response would be that we wouldn't have as many criminal conspiracy trials if we didn't have as many criminal conspiracies. That is rather obvious.

11:10 a.m.

The nature of criminal activity has changed over the years, certainly during our years at the bar. It has become much more sophisticated in some respects inasmuch as there are sophisticated criminal conspiracies.

Often individuals who are primarily responsible for the criminal activities choose to be less directly involved, which makes the whole process of prosecution that much more complicated.

**Mr. Lawlor:** No doubt there is an area of justification. On the other hand, it seems to me the tendency is to throw the net fairly wide in order to catch some fish at the end of the day. It really has to be looked at.

The competency of counsel, which I have mentioned previously, is referred to. "The excessive use of discretionary procedures which postpone consideration of the merits of the case; the increase in the number of more sophisticated crimes and criminals"—just as you mentioned—"the influence of legal aid"—they always manage to work that one in, and no doubt it is an influence. It is one of those influences where I think the price is justified. The poor for centuries had no help, and this is the first decent move to give some recognition to the fact that many people are convicted improperly simply because of not being able to speak. "The impact of 1,000 new lawyers entering the profession every year."

Down at the bottom he says, "Obviously there's something wrong with the system that requires months to bring a man to trial, which asks the public to become involved in the legal process and then excludes the jury from the courtroom for days and weeks while counsel argue points of law which frequently have little impact on the jury's decision"—Evans is cutting. He bears a stiletto.

**Hon. Mr. McMurtry:** I like to interject every once in a while so I can make notes.

I would just like to make the general observation that some judges may be overly tolerant when it comes to protracted arguments with respect to the admissibility of evidence. I don't want to be too critical because I think we are well served by the judiciary in this province, but judges do have basic control over the process. Sometimes these interminable arguments are simply not necessary. A firmer judicial hand can assist the process.

**Mrs. Campbell:** Surely, in some measure that is a reaction. There was a time when the courts were very stiff. I remember sitting in the Court of Appeal on one occasion when a young lawyer was presenting his case and the chief justice of the day was presiding. I recall with a great deal of heartfelt thanks that Mr. John Robinette, having sat through this ordeal, rose and said, "My lords, I hope that it will never again be my unpleasant experi-



ence to observe young counsel being treated with such disdain."

It was a very useful exercise. I think there was a reaction against that kind of approach, particularly to young counsel. In my day the courts were very formidable and very impatient often. We have to weigh these things in the balance, I suggest.

**Mr. Lawlor:** Everything has to be weighed. There's a very famous case in England—Denning reports it—of the judge constantly taking over in the Court of Appeal. I should have brought it this morning; it's hilarious.

He continues: "A system that compels a citizen to attend as a witness at considerable personal inconvenience when his testimony, which is frequently only of minor importance, could have been agreed to in a pre-trial disclosure or examination.

"The rights of an accused must be safeguarded, but society has certain rights as well. There comes a point when the citizen can say, with considerable justification, whether certain time-honoured procedures are necessary safeguards in our present society, or whether they are being used as barricades to obstruct justice.

"The area in which reform might well be considered is in pre-trial procedures involving certain indictable offences. The traditional purpose of the preliminary hearing was to ascertain whether the evidence was sufficient to commit an accused to trial. Under our present case law it has become a discovery procedure, based on the theory that it is the only adequate method whereby an accused can be informed of the case which he is to meet at trial. The result has been an increasing trend towards protracted preliminary hearings which have exacerbated a serious backlog of cases in the provincial courts and, as a result, have caused substantial delays in processing criminal charges to trial in the supreme court."

I suppose all you can really say about that is that provincial court judges, when they think sufficient evidence has been produced in the case to warrant committal—that is, a prima facie case has been made out—should exercise the kind of discretion you're talking about and say: "I'm satisfied that there is enough evidence. We won't let the fishing expedition go on for the rest of the afternoon."

As I understand it, that would be perfectly permissible. You would get lawyers appealing that because they didn't have an opportunity to get all the outreaches of their erudition up to the Court of Appeal. The fact is I don't think they would get very far if they tried.

I know you don't give instructions to judges, but on occasion you do speak to them.

**Mrs. Campbell:** He encourages them.

**Hon. Mr. McMurtry:** I certainly don't give instructions to judges. We're responsible for the conduct of the prosecution and it may be argued that because of our specific role as prosecutors we should be necessarily limited as to what we say about the propriety or otherwise of the conduct of the defence, that our view may be not totally unbiased.

There is no question that this whole issue of protracted cross-examinations is very difficult. More often than not judges will give the benefit of the doubt to the accused, assuming that the lengthy cross-examination is leading somewhere. In many cases, unfortunately, I hear the judges at the conclusion become aware of the fact that it led nowhere and is often the result of straight incompetence. Probably with the proliferation of lawyers—there have been many additional lawyers in recent years—the trial ability has been somewhat diluted in both civil and criminal courts.

**Mr. Lawlor:** Then he says, "Trial courts should have greater control over pre-trial procedures if the process of criminal trials is to be accelerated. It may be beneficial to permit the court of trial jurisdiction to acquire earlier jurisdiction over an accused so the entire committal and discovery process is subject to the control of that court, which could deploy its resources to expedite cases of particular public interest and to assist in case scheduling.

"I would anticipate that the project would consider the substitution of the present preliminary hearing procedure with a rational system of pre-trial disclosure or discovery, including a limited procedure for the examination of certain witnesses prior to trial. Mandatory pre-trial hearings would help narrow the issues to be tried and should materially reduce the volume of evidence to be presented."

In due course, I will ask you to respond.  
11:20 a.m.

"A proper pre-trial disclosure should also be capable of diverting a number of cases from the full trial process through the acceptance of guilty pleas and, perhaps, through some form of plea negotiation with clearly defined procedures for safeguards.

"I envisage that the pre-trial hearing would be conducted before a judge of the court exercising jurisdiction. The applications relevant to the admissibility of evidence would be disposed of at such hearing."

He goes on to speak of the language problems in the court and you spoke on that in your participation in the Confederation debate. You have moved and this should be recognized.

These graphs puzzle me.

I have the report of Chief Judge W. E. C. Colter on the work of county and district courts of Ontario for the year 1979. This is not as elaborate, or perhaps not as incisive. It speaks of the appointment of small claims court judges:

"Although by statute a county court judge may also act as a small claims court judge and does so in many areas, the court has a right to appoint its own small claims court judges and has done so, appointing one in Ottawa, one in Hamilton, seven in Toronto. Although small claims court jurisdiction is limited to claims of \$1,000, legislation is expected to be cleared into force in the near future which would give this claims exclusive jurisdiction up to \$3,000."

You haven't done that yet, have you?

**Hon. Mr. McMurtry:** We were going to proclaim the legislation. The rules have been pretty well agreed upon. We had an advisory committee working for many months on the rules of practice and talking about representatives—for example, the County of York Law Association and the Advocates' Society. I think we are still working the Deputy Attorney General a little bit on the wording. I had hoped to have this court functioning as of the beginning of June but it now looks as if it is going to be the end of June.

**Mr. Lawlor:** Specifically, how many small claims court judges have you appointed?

**Hon. Mr. McMurtry:** I think the number you referred to is correct. The full-time small claims court has six in Toronto. We have one in Hamilton and one in Ottawa. We just appointed one in the Niagara region. They are doing more or less of an area or a region. Hamilton, Niagara and Ottawa are the only full-time small claims court judges outside Toronto, and there are six in Toronto, full time.

**Mrs. Campbell:** Are you going to increase the jurisdiction of this court? Are you still following, in Toronto, the practice of from time to time appointing part-time judges from the members of the bar to sit on these cases?

**Hon. Mr. McMurtry:** Deputy judges?

**Mrs. Campbell:** Is that what they are called? I don't know.

**Hon. Mr. McMurtry:** Yes, they are referred to as deputy judges. They are ap-

pointed by the county court judges in the various areas. To my knowledge, in Toronto our full-time judges look after all the day-time courts and with the deputy judges sit in on some of the night courts. I don't know if that is correct.

**Mr. Lupusella:** Mr. Chairman, may I ask a question?

**Mr. Vice-Chairman:** Does that complete your questioning, Mr. Lawlor? Is it just a supplementary, Mr. Lupusella?

**Mr. Lupusella:** Following the report of my colleague, Mr. Lawlor, would you please give us some indication if you made an appointment for northern Ontario or if northern Ontario has been left out by not appointing a judge for the small claims court. What are you planning to do?

**Hon. Mr. McMurtry:** In much of northern Ontario the county court judges look after the small claims court work to a very large extent.

Traditionally the small claims court or, as they used to be called, division courts, were presided over by county court judges. In certain areas and, I believe, in the north the county court judges still preside in those courts. In some areas of the province the county court judges apparently have become overloaded to an extent where it has been necessary to appoint deputy judges, part-time judges, from the practising bar.

I would like to see that eliminated and have full-time judges in every court. I cannot be precise. I cannot say there are no deputy judges, part-time judges, sitting in northern Ontario. I can recall discussing this in a two-day trip I had in northwestern Ontario last week, where I was led to believe the county court judges were able to handle that case load, which is desirable.

**Mr. Lupusella:** Are you planning to increase the number as well?

**Hon. Mr. McMurtry:** The number of full-time small claims court judges? Yes.

**Mr. Lupusella:** Do you have any indication when?

**Hon. Mr. McMurtry:** We are increasing it slowly. I think we only had two or three full-time small claims court judges when I became Attorney General. We now have nine full-time small claims court judges. The increase has been slow and I would like to see it accelerated. We will do the best we can within our resources.

**Mrs. Campbell:** Could I ask a question? My colleague has observed to me that at least in the past—he is not clear about today—that system prevailed in Windsor. If it does

prevail in Windsor, perhaps that is one of the problems in the other courts in Windsor. Do you have a full-time small claims court judge in Windsor?

**Hon. Mr. McMurtry:** No, I am not sure whether it is all handled by deputy judges.

**Mr. Leal:** All by deputy judges.

**Hon. Mr. McMurtry:** It would appear that the county court judges have been relieved or have relieved themselves of that case load. It would be desirable, in my view, to appoint full-time small claims court judges there as elsewhere in the province.

**Mr. Vice-Chairman:** Do you have a supplementary on this, Mr. Newman?

**Mr. B. Newman:** The minister is aware of the criminal courts in the city of Windsor and the backlog of cases.

**Hon. Mr. McMurtry:** We were discussing it earlier.

**Mr. B. Newman:** Yes, my colleague mentioned that he discussed it. Do you have a solution for the problem?

**Hon. Mr. McMurtry:** We indicated earlier that we had requested the federal government to appoint another county court judge in that area. We also have provided two new county courtrooms as of the end of the year.

**Mrs. Campbell:** How useful are the courtrooms without the judges?

**Hon. Mr. McMurtry:** I am told that these courtrooms are important.

**Mr. B. Newman:** There is another issue I wanted to raise and that is the cost of using municipal police for protection in the courts? Are you going to assume that responsibility so the municipality would be relieved of the \$300,000 it costs it to have the police on duty in the courts? It is really your responsibility, not that of the local municipal police force. In fact, they have passed a resolution. I would like to read the resolution to you. I will leave off all the "whereases."

"In accordance with the recommendation of the Board of Commissioners of Police that the cost of the provision of security for provincial courts be assumed by the department of the Attorney General of Ontario."

Do you plan to act on that?

11:30 a.m.

**Hon. Mr. McMurtry:** We have indicated publicly we recognize this and would like to provide, through the Ministry of the Attorney General, assistants to share the responsibility for security. The local police will always have some degree of responsibility

with respect to the criminal courts. In my view it is a proper function of their duty as police officers for the protection of the public.

The clientele in these courts is not of the highest calibre and some are quite dangerous. There will always be the necessity for some police officers to be there, but we have recognized the advisability, the principle of attempting to relieve police officers from duties which can be performed by non-police officers, because of the cost and expense when a police officer is involved in security.

We are working towards that end. It is a question of what we can afford to do, of what the government is prepared to do financially. I think there should be a shared responsibility in that area and we are working towards that end.

**Mr. B. Newman:** Is it shared at the present time? What percentage of the costs do you absorb?

**Hon. Mr. McMurtry:** In most areas of the province it has been the responsibility of the local municipalities as far as the local, provincial criminal courts are concerned.

When the province took over the court-houses in 1968, it was rather unclear who really accepted the responsibility of security. We have debated this subject back and forth. I am of the view that the legal position is not clear. The local police do have a responsibility in relation to protecting the public locally. There is no question about that.

On the other hand, I recognize that we have some responsibility too. We are hoping we will be able to work something out the various municipalities would go along with. This is something I have discussed with the Minister of Intergovernmental Affairs (Mr. Wells) and the Treasurer (Mr. F. S. Miller). It will have to be taken into consideration as part of the overall provincial-municipal funding arrangements.

One of the difficulties I have perceived, and we debated this recently, is with respect to police grants, quite apart from this courthouse security problem. I am not comfortable with the \$15 per-capita grant of regional police as opposed to \$10 for municipal police.

If you isolate that particular arrangement the municipalities can argue that if they do not have regional police their costs are equivalent on a per-capita basis to that of regions and they should get the same grant. The difficulty is there are a lot of other grants that take these things into consider-



ation. One cannot really isolate one specific grant because it's the old story where one is comparing apples and oranges to some extent.

We are trying to rationalize the whole process. While the municipalities will complain to us, I think there is an analogy here that they should be getting the same per capita grants as the regions as far as their police are concerned. I understand that argument. What they do not talk about is certain other grants the regions do not get. In other words, they tend to balance out somewhat.

There are a number of different weighting factors, much of which I do not quite understand. I was discussing this with the Treasurer the other day and he referred to the additional \$100 million that was added to municipal grants, which took a lot of these factors into consideration.

**Mr. B. Newman:** I would also assume that the use of the municipal police in the courts may lead to a deterioration of the police services in the municipality. Would it not be better to have the police on the beats or in cruisers or doing other duties, rather than have them sitting in court? Could you not develop a special type of personnel for that job?

**Hon. Mr. McMurtry:** Again, we come back to the protection of the people who are in the municipality and the extent to which the province is responsible for local law enforcement. We would like to relieve the municipalities of some of this cost, but in my view it's a shared responsibility. I can tell you, there are a lot of judges who wouldn't be very happy sitting in our provincial criminal courts if there weren't a few policemen around.

**Mrs. Campbell:** Or in family courts.

**Hon. Mr. McMurtry:** That's right. The police do have a responsibility in this area because it does relate, in my view, to the protection of the local citizens, whether they be judges or other citizens.

**Mr. Ruston:** It wouldn't be too difficult in the case of Windsor where they want \$300,000. You would only have to increase their per-capita grant to \$11.50 from \$10. They would still be under the region but they would have their \$300,000, which is still less than is given to the region.

**Hon. Mr. McMurtry:** As I said, Mr. Ruston, there are other factors which the Treasurer maintains are taken into consideration with the municipalities. It's a good argument. The point is they will isolate a

specific grant program. They may not talk about the additional grants that are made on an unconditional basis elsewhere.

**Mrs. Campbell:** I would just like to add a footnote. When the province took over, it did not just take over the jails. It took over the administration of justice in those areas. I think that should be borne in mind if one is casting about for a legal opinion as to what happened. I happened to be involved at that point and I welcomed your intervention, but it was not just the physical plant you took over; you took over an awful lot more than that.

**Mr. Ruston:** What is the number of provincial judges you have now in the Essex court system? That includes the city of Windsor and the county of Essex with a population of about 320,000. I am just wondering how that compares to other areas. I don't know whether more people break the law in Windsor and that's why we have one of the worst tie-ups in the courts in Ontario, or whether there is some other reason.

**Mr. B. Newman:** We have an added burden because of the fact that we are a border city adjacent to Detroit. A lot of the undesirable actions may be a result of a certain type of individual coming into our community.

**Mr. Leal:** Specifically in Essex county, as of April 1, 1980, there was a senior judge, Judge Stewart, and three puisne judges. That is a total of four.

**Mr. Vice-Chairman:** I wonder if the minister would care to respond to some of the questions Mr. Lawlor raised before we go much further.

**Mr. Lawlor:** There are a number of outstanding things. Some of them are just observations at the moment. I would prefer to continue and accumulate a few more points, and then he can handle them.

Just a short question: What's happening in Timmins?

11:40 a.m.

**Hon. Mr. McMurtry:** There is a new court facility opening in June.

**Mr. Lawlor:** You are taking it out of the mortuary?

**Hon. Mr. McMurtry:** Yes.

**Mrs. Campbell:** June is not only a bridal month. We open courthouses all over the place in June.

**Mr. Lawlor:** McMurtry travels throughout the province opening new courthouses. Okay.

**Hon. Mr. McMurtry:** It doesn't happen as often as I'd like to see it happen.

**Mr. Lawlor:** Apparently there are a few of them opening in June.

This is under case load statistics: "Court activity statistics for the 48 county courts are available only for 11 months ending November 30, and do not include federal narcotics criminal trials which are a substantial part of the criminal case load. These statistics show tremendous activity in the county courts across the province, with the number of cases being disposed of roughly equalling the number of cases added to the court list, except for criminal jury cases where there have been 11 per cent more cases added to the list than the courts, working at full capacity, could dispose of."

That kind of statement gives some credence, again, to Mr. Walker's contentions. After studying this, I can't totally discount what is being claimed—with that kind of escalation, and the inability to cope, et cetera. We have a partial responsibility to assist in making submissions as to how that can be done, but the fundamental responsibility—and the Attorney General, I am sure, accepts it fully—of dealing with that kind of a situation lies peculiarly within his ambit.

Somehow it seems to be, year after year, an ongoing, losing battle. With all the appointments of judges, and new courtrooms opening, et cetera, there still is a slowdown and it flows back. It backs up and flows back on to the rest of the system, and the cost of this, as it accumulates, could very well pay for the means to alleviate it.

It is not as though it were an extra expenditure. The costs are being borne somewhere. It's a false economy to hold back on providing a thoroughly adequate and competent judicial system in order to attend to the present seriously mounting problems.

**Mrs. Campbell:** Could I just ask, on that last point, if there are any statistics as to whether this increase in drug offences is reflected in the family court cases? Is there an increase there?

**Mr. Leal:** We really have a paucity of statistics with regard to food, drug and narcotics control because, as the honourable member knows, in this area those cases are prosecuted by federal prosecutors and not by our crown system. As Mr. Lawlor mentioned a moment ago, those statistics are not reflected in our statistics.

We are attempting, through the chief justice's committee on bench and bar, to have those statistics brought into the system

so that we can get a better appreciation of how the backlog is affected by them, but at the moment we just don't have them because we don't receive statistics from the federal prosecuting office.

**Mrs. Campbell:** In my experience, those cases certainly did create problems in family court, although there weren't very many in my time. The arrangements with the Royal Canadian Mounted Police officers, and all the rest of it, were somewhat time-consuming and I wondered if it were on the increase.

**Mr. Lawlor:** The next portion here, again, bothers me enormously. I am sure it bothers you too.

"My report, therefore, will deal with only 47 courts outside the county of York. In these counties there were"—he is leaving out York—"694 criminal jury trials pending on January 1, 1979, and 1,218 were disposed of in the 11 months, but 1,362 were added to the list so that the number of cases pending at the end of November had increased slightly to 804 cases."

One would like to spend a great deal of time on these estimates and ask the Attorney General to bring in a breakdown of those figures, a real breakdown, showing what portion of those individuals outside the county of York were reposing in jails, what the bases of it were, et cetera. That's what we don't have. I am sure that in the overwhelming majority of cases there is good justification, but we have to question—that is our responsibility—whether, in a sufficient number of cases, this is not justified. Even if there were one it would be enough, but I suspect there are quite a few, a good proportion of these cases.

"Passing on to nonjury criminal cases, 390 were pending at the start of the year, 1,114 were tried in the first 11 months and 1,258 were added." The "pending" figure increased from 390 to 496, or close to 500. "In summary convictions appeals, some 1,179 were pending, 2,211 were disposed of, but 2,426 were added, and so the number of appeals pending at the end of the November was 1,394.

"The remainder of the picture is much brighter. Outside Toronto, in the civil jury cases, 423 were added to the list, but 436 were disposed of. In the civil nonjury cases, 4,926 cases were added, but 5,252 were disposed of." They have been able to reduce that backlog.

"I won't go on with these statistics because they have been dealt with. The courts are contending with it and deserve

honest credit. I would perhaps stress that the term 'cases pending' does not necessarily indicate a backlog in the sense that term is normally used.

"Apart from criminal jury situations, cases are being tried on a relatively current basis throughout the province, including Toronto, with cases on the pending list which are actually ready for trial and in which the parties are anxious to proceed, being assigned dates for trial within a matter of weeks or a very few months. However, criminal jury cases are being added to the list at a rate which renders it almost impossible to keep up with the inflow, let alone reduce the backlog. Although, by marshalling all possible forces, the backlog has been kept relatively constant, with the number of cases being tried roughly equaling the number of cases being added to the list. Outside Toronto, the situation is reasonably well in hand.

"In summary, the trial situation has improved greatly during the past year and civil litigants fear a good part of the credit is due to the extensive use by the judges across the province of pre-trial procedures. Experiments in judicially supervised pre-trial disclosure in criminal cases are also encouraging, although much work has yet to be done in stimulating bilateral trust and confidence between crown and defence counsel. As well, in the county court there is considerable hope that the problem of backlogged criminal jury trials may be solved in the next few years if the Attorney General's efforts to obtain the funds necessary, the funds required to provide additional courtrooms, are successful."

In Toronto, you are adding a couple of new courtrooms. Are they being used in this particular regard for county court criminal trials?

**Hon. Mr. McMurtry:** There are two county court jury courtrooms being added, but they are not completed yet.

**Mr. Lawlor:** When do you expect them?

**Hon. Mr. McMurtry:** They won't be ready until some time in the fall.

**Mr. Leal:** There has been an arrangement whereby Chief Justice Evans has surrendered one of the Supreme Court jury rooms at 361 University Avenue. It has been taken over by the county court for the judicial district of York for county court jury trials in criminal cases, and Chief Justice Evans is utilizing a courtroom in Osgoode Hall.

**Mr. Lawlor:** I see.

**Mr. Leal:** That is something which has already been done. The Attorney General's answer, of course, is quite right: The two new jury courtrooms at 361 University Avenue will not be on stream until the fall.

**Mr. Lawlor:** Is there any more room in Osgoode Hall for additional courtroom space?

**Mr. Leal:** Osgoode Hall or the courthouse, sir?

**Mr. Lawlor:** Where the Court of Appeal sits.

**Mr. Leal:** No. There is little or no room in Osgoode Hall, and additional courtroom space at 361 University Avenue can be gained only by moving out some of the administrative offices, like the sheriff's office on the ground floor. That is being discussed at the moment with regard to long-term plans for increasing the number of courtrooms in that building by moving some of the administrative offices to other locations.

**Mr. Lawlor:** Just a word on the unified family court. There is a section in here and I will just read the final part.

"There appears to be no question that the unified family court has demonstrated the desirability of having all family matters adjudicated in a single court, but certain constitutional problems must be solved before agreement can be reached on the manner in which it should be extended province-wide." Do the constitutional problems still obtain in the extension of that court or do you have a good accord with the federal Attorney General?

**Hon. Mr. McMurtry:** No. The constitutional problems you are referring to are not directly related to the concept of the unified family court in so far as the Hamilton project or model is concerned. I am concerned about expanding the Hamilton concept into other parts of the province for one very basic reason: I don't want to fragment the family court unnecessarily in this province.

In other words, I don't want to have a certain number of members of the family court in Ontario, which I think should be maintained at the provincial level as a matter of principle, to have federal appointments. Of course, a certain number of them are federal appointments. I think this can lead to fragmentation, which would not be in the best interest of the administration of justice.

I have indicated to our family court judges that so long as there is some reasonable expectation of constitutional reform in this area, I would prefer to wait for that. That is simply something that has been agreed upon by all provinces as a matter of principle: to give the provincial courts (family division)



jurisdiction with respect to all "family disputes."

In view of the fact that all of the provinces have agreed to this principle, I would prefer to be relatively optimistic and hope that will happen in the not too distant future. If it looks like this constitutional reform is not going to move ahead in this area in the relatively near future, then we will have to reconsider the advisability of expanding the Hamilton model into other parts of the province. But I feel very strongly, I repeat, about the principle of maintaining the family court at the provincial court level, for a whole number of reasons which I think are in the public interest. Therefore, I would like to avoid this fragmentation to which I have referred.

**Mr. Lawlor:** I take it you would give some accord to that wild Irishman who says the provinces should appoint all levels of the court, top to bottom.

**Hon. Mr. McMurtry:** Yes, I would support that as a matter of principle.

**Mr. Lawlor:** That may come to pass before you know it.

**Hon. Mr. McMurtry:** The provinces have the responsibility for the administration of justice and I think the provinces could well make these appointments. I have supported that as a matter of principle.

It is not a major issue as far as I am concerned because I think the federal government's appointments are generally very good. I do not have any quarrel with them. I also think it may be a little unseemly to get into a major public dispute as to who is going to appoint the judges, because I think it is something that might be difficult for the public to understand, as a type of territorial dispute. As a matter of principle I support the proposition that the provinces should appoint the judges in all courts—

**Mr. Leal:** Except federal.

**Hon. Mr. McMurtry:** —except the federal courts, the Supreme Court of Canada and all provincial established courts.

**Mr. Lawlor:** You would want a power of nomination over at least two of the Supreme Court of Canada judges.

**Hon. Mr. McMurtry:** No, I have always taken the position that the federal government should consult with the provincial Attorneys General in relation to the appointment of judges to the Supreme Court of Canada, but I have never taken the position that the provincial Attorneys General should have a power of veto with respect to Supreme Court of Canada appointments.

**Mr. Lawlor:** I do not like the proposals on that either, particularly the constitutional section of the court.

**Mrs. Campbell:** You will no doubt be wrestling with these questions very shortly as we follow through on the appointment of the committee.

**Mr. Vice-Chairman:** When is that committee going to get under way?

**Mrs. Campbell:** That is what we are asking. I think it is in your hands and not in ours. I think we are prepared to announce our members.

**Mr. Lawlor:** Is that right? Why?

**Mrs. Campbell:** Yes, we want the committee to be established.

**Mr. Lawlor:** Are you one of them, Mrs. Campbell?

**Mrs. Campbell:** No.

**Mr. Lawlor:** The judge turns to the county of York in a separate report. I am going to try to shorten things a bit. On the proportions of the backlog he says:

"In criminal matters there is a backlog at December 1, 1979, of 2,140 jury cases and 260 nonjury. The proportion of the backlog now remains about the same for some years. This, despite a very large increase in the number of criminal cases coming into the county court. In all those years this court has continued to do its work in precisely the same number of courtrooms—eight—copied only by reason of dramatic increases in workloads and reorganization of procedures.

"In 1970 there was processed in the eight courtrooms 924 cases. In 1978 the number had risen to 2,100. In 1979 the cases rose to approximately 2,500, with 2,246 being disposed of. Three times the work is being done by the same number of judges and the same number of courtrooms as 10 years ago."

You have indicated you are going to get two more and then another one thrown in, so some alleviation is coming in this direction. Look at the work load those judges in the county court, some of them our former colleagues in this House, must be carrying. Probably the toughest part of law is the business of handling criminal cases with assiduity and particularly having to think about the sentences. I am surprised many of them have not broken down.

It picks up, "It is hoped that the need will shortly be met and further that it will not be perceived to be that temporary facilities, however desperate, will suffice and be acceptable in the long term to the judges of the

county court simply because they have, on the civil side, been willing for years to put to use totally inadequate facilities which would undoubtedly be rejected out of hand by other judges."

I haven't been down to the College Park location. Is it operating?

Hon. Mr. McMurtry: It is operating well. The court facilities there are very good.

12 noon

Mr. Lawlor: I think I will terminate the liturgy, the incantations, at this time.

Mrs. Campbell: Was the Attorney General going to respond?

Hon. Mr. McMurtry: I will be happy to respond.

Mrs. Campbell: I think that would be a courtesy to Mr. Lawlor and then I have some observations.

Hon. Mr. McMurtry: I already made some observations about additional courtrooms at the University Avenue courthouse. If I do not address myself to some of the matters Mr. Lawlor raised I am sure he will draw my attention to them.

With respect to the taxation matters and the Supreme Court, this has been a matter of great concern to us because I have heard a number of complaints with respect to these delays. I may have unwittingly created part of the problem by removing the senior master from his day-to-day responsibilities with respect to his important role on the Williston commission in so far as revision of the rules of practice are concerned. The senior master, Mr. A. F. Rodger, is now back and I think this will be helpful.

Our review of the problems related to taxation would indicate a significant part of the difficulty is with respect to the scheduling of these taxations. The most recent report I received, a few weeks ago, was that there was a close to 50 per cent no-show rate on the part of the lawyers. We have added to the administrative staff with respect to taxations and I am hoping that, together with the greater availability and the presence of the senior master, will assist. I expect to receive a report on this shortly. If it has not alleviated the situation to a great extent we will appoint an additional taxing master or two, something we have also considered.

Mr. Lawlor: May I ask a question in this context? On no-show, I take it the taxing officer proceeds with the taxation. In my opinion he should. Without the lawyer being present he does not?

Hon. Mr. McMurtry: No, I gather not. My information is that—

Mrs. Campbell: But what happens with—

Hon. Mr. McMurtry: It gets adjourned so it adds to the backlog, adds to the delays.

Mrs. Campbell: Surely without some reasonable explanation there should be some penalties for no-show.

Hon. Mr. McMurtry: I intend to sit down with the senior master and find out what is happening at the present time. The most recent report I have is a few weeks ago and I hope we will demonstrate that some improvement is taking place. We are watching it and I am well aware of the matter.

There is the question of protracted trials, the question of whether there is adequate training of lawyers who engage in criminal or civil litigation and the possible responsibility of the Attorney General to liaise with the law schools in so far as their training is concerned.

Representatives of the Ministry of the Attorney General lecture from time to time at various law schools and I meet with the deans. My view is that the real challenge with respect to improving the quality of professional competence lies with the Law Society of Upper Canada and I think it is attempting to address this problem. They announced, within the past week, the mentor program where some 20 or so senior counsel in the profession have indicated their willingness to be available for consultation by younger lawyers. I think this is a laudable step and I congratulate the senior lawyers who have agreed to give of their time, without fee I understand, to assist in this program.

With the increase in the number of special education programs conducted not only by the Law Society of Upper Canada, but also by associations such as the Criminal Lawyers Association and The Advocates' Society, this problem is being addressed. There is a great awareness in the profession which is obviously important to the whole process.

On videotaping, I know Mr. Peter Rickaby, the crown attorney for the judicial district of York, in recent months has visited New York and Washington to see what is being accomplished there. We are reviewing it. I cannot tell you at the moment where we are going to go from here. Mr. Lawlor, but I will be discussing this within the ministry and will advise the committee in due course. I can see a number of practical problems with respect to the matter, not least of all the expense. It might be related to this as compared to the positive results

that might be achieved, but I will try and get caught up as to where we are going.

On the matter of preliminary hearings, its initiative has commanded the attention of the Law Reform Commission of Canada. I recall discussing a report with a former chairman. Some of their proposals, while well intended, I do not think would have helped the situation much. It remains a serious issue.

I understand that the bench and bar committee that operates under the chairmanship of the chief justice of Ontario has a group continuing to study the issue to see how we can improve the process and the procedures which would have to be done by legislation at the federal level, apart from our ongoing efforts to encourage the pre-trial disclosure.

We have had pre-trial disclosure encouraged throughout the crown attorney system. A specific project has been operating for some time in Scarborough. In general terms, we think preliminary hearings can be avoided or shortened considerably if there is this pre-trial disclosure. The nature of the disclosure varies from place to place.

Some police forces are not totally enthusiastic about pre-trial disclosure on the basis that they allege interference with and harassment of witnesses, but there is no question pre-trial disclosure will continue to be given a high priority. This could not only avoid a number of preliminary hearings, but could also shorten the length of the trials themselves.

12:10 p.m.

It has been my experience that the more senior members of the bar, the more experienced members of the bar, are more likely to waive preliminary hearings than the younger members of the bar. Senior counsel are often content to accept a copy of the crown brief which they feel serves the interests of their client, as far as knowing the case they have to meet is concerned.

These protracted preliminary hearings are often the result of simple inexperience. I can think of a number of our senior counsel who, as a matter of practice, waive preliminary hearings because they are satisfied the information they get from the crown is adequate for their purposes.

Again, it is an issue for which there are no simple solutions. It seems to me our preliminary hearing process is probably much more elaborate in Canada than in most other jurisdictions in the western world, and I think we have to continue to address that problem.

With regard to the backlog in county court, it is my information that individuals in custody can get on with their cases pretty quickly if they want to. Most of the backlog is related to individuals who are out on bail, and, of course, there is the problem that many accused, even when they are in custody, are quite content with trial delays if they are of the view that they are going to be serving time in any event. Sometimes accused individuals prefer to do some time in a local lockup rather than in a penitentiary, which they expect to arrive at at some time. Because that time is usually taken into consideration—

Mrs. Campbell: Not always.

Hon. Mr. McMurtry: —one does not hear any complaints.

It has always surprised me, quite frankly, that during the time I have enjoyed my present responsibilities I can't recall receiving a single letter from an accused person in custody complaining of a delay in his trial. I may have, but I can't recall it at this moment. That means, if I have received any, it couldn't have been more than one or two or three over a period of more than four and a half years.

I would have thought that in any system run by human beings there are bound to be problems, human errors or some breakdown in administration from time to time, but I honestly cannot recall having received one single letter from an accused person in custody complaining to me that his trial had been delayed. As I said, over that period of time there may have been one or two or three that I have simply forgotten, but I just sort of assumed that in any system run by human beings you are going to hear from time to time from individuals in custody who perhaps felt the delays prior to their trials were unnecessarily long.

Mr. Warner: Do you assume there is no problem?

Hon. Mr. McMurtry: I just think it is an indication that, while there certainly is a problem with trial delays, the problem of an individual accused suffering an unfair hardship by reason of these delays is fairly minimal. That doesn't mean to say the public as a whole does not suffer because of trial delays, because obviously the effectiveness or the strength of the prosecution may suffer if too much time goes by. Witnesses' memories tend to fail or witnesses become unavailable and therefore the public may suffer if the prosecution is not as strong as it might have been had the matter reached trial at an earlier date.



**Mr. Lawlor:** I have two comments. One of them is that it might be interesting to consult the law society as to whether complaints are lodged with it in this particular area. I haven't had any such complaints either. I don't know if Mrs. Campbell has.

Second, we also have to consider what inhibitions these people might feel. One of them might be that they wouldn't want to offend their counsel. They are relying upon him for trial and to complain, in most instances or in many instances, would involve the very lawyer upon whom they are dependent.

**Hon. Mr. McMurtry:** That is a possibility.

**Mr. Lawlor:** What you are saying is a pretty good answer, but it doesn't cover all the ground.

**Mrs. Campbell:** There is also the fact that in some cases there is a feeling about the tie-in between the Attorney General and the crown, and they prefer to rely on their own counsel to try to resolve it. I don't think it covers all the possible situations. That's all I would say on that one.

**Mr. Leal:** Mr. Chairman, perhaps I could be permitted to add to this. In line with what Mr. Lawlor was pursuing a moment ago, the Professional Organizations Committee, in dealing with its study of the legal profession, among others, actually had people on the premises of the law society going over the complaints that had been lodged with the law society against members of the profession.

I can confirm that the complaints on the criminal side are minimal; indeed, they are almost nonexistent. The bulk of the complaints dealt with solicitors and barristers, but in connection with a civil case or a conveyancing matter, not in connection with a criminal case.

**Mr. Warner:** Could I be so bold as to suggest that there is an element which you may be overlooking? I mention it because it struck me very forcefully when I met with some people who were in jail awaiting trial. They had been there for some time.

I had three of them mention to me that they had been through the routine previously. They said it was worse sitting in the Don Jail for three or four months waiting for their trial than being in the penitentiary, because this was completely lost time. There was nothing to do. They just sat there. There was no program of activity.

I haven't been to the penitentiary at Kingston and so I don't know exactly what kind of program it offers, but I assume there

is some form of activity for the prisoners. That was one thing they mentioned.

The second, and I think it is a pretty basic human response, was: "I want to know what is going to happen to me. I want to know whether I am going to be found guilty or not. I don't want to be sitting in here awaiting trial. I would like to know what my fate is." I guess all of us like to know as quickly as possible what is going to happen to us, in any circumstances. Their third question, although I wasn't quite convinced by the argument, was about the dead time: "What effect will this have on my sentence?"

12:20 p.m.

Those were their three points. These three individuals certainly stressed to me that they would prefer to be found guilty quickly and to be sent to the penitentiary rather than sit for three months in the Don Jail waiting to come to trial, because of the total lack of activity or any constructive program, which I assume is available at the various penitentiaries.

I just put that in as the other side to there not being any formal complaints lodged. I suspect that sometimes these people, who, of course, have run afoul of the law—they are on the other side of the law very often, the wrong side—because they have, don't trust the justice system either. They haven't won in the justice system.

What would prompt them to write a letter to you or to the Law Society of Upper Canada or to anybody else, for that matter? Instead, perhaps they bottle up their frustrations with the whole system. I doubt this is the kind of person who would sit down and write a letter. That is just my own impression of the situation.

In conclusion you should be doing whatever can be done, when you are preparing a case, to provide as quick an opportunity as is reasonable for it to come to trial. You not only do justice to the people as a whole, as you mentioned, but also to the person, the individual, involved. If, in fact, the person is guilty of a certain crime, he should, as soon as is possible and reasonable, receive whatever sentence seems to be appropriate.

**Mrs. Campbell:** There is another factor too, in the system we have. At the Don Jail this does not apply, but in other areas of detention persons awaiting trial who are on medication, for example, are faced with the fact that there is no provision in some of these areas to give them that medication, and that scares people. It is part of a real worry about their own health. I have discussed this with officials at the Don and officials at the minis-

try. There are other matters pertaining to things such as dietary laws. There is a wide range of problems for people awaiting trial which is not taken into consideration in our justice system.

These people wouldn't think of the Attorney General. They are looking at somebody else. They would not really consider that their complaints might be addressed to the Attorney General. They would think in terms of the correctional institution or something of that kind.

I don't think, with respect, that the Attorney General gets the overall picture of what happens to people while they sit waiting for trial. There can be some very serious problems that just wouldn't come to the Attorney General. I would hope that out of all this we might have a greater liaison between the Attorney General and the Minister of Correctional Services.

**Hon. Mr. McMurtry:** I don't want to sound overly facetious. I was in practice at the defence bar for more than 17 years. I certainly had a number of clients who complained about the absence of a cocktail hour at the Don Jail, but—

**Mrs. Campbell:** I am not talking about that at all. I am talking about serious medical problems.

**Hon. Mr. McMurtry:** Speaking seriously, I do not want to suggest any complacency on our part. I think everybody has to be vigilant. We have a responsibility with respect to the administration of justice in this province to see that the rights of all individuals are protected, but certainly we must rely on two processes that are very fundamental to the whole operation of the administration of justice.

First of all, we must rely on a practising profession which recognizes its responsibility to protect its clients from unfairness in so far as undue periods of incarceration prior to trial are concerned. The taxpayers contribute to a very good legal aid system, and that is a very important part of the process.

A second aspect we must rely on, of course, is what we are going through here in estimates, individual members of the provincial Legislature monitoring the situation. Any member of the Legislature, to my knowledge, is free to tour any provincial lockup at any time and is accessible for any complaints people in detention might have with respect to the system.

Regardless of our responsibilities, which are considerable, I have to tell you that the administration of justice must depend on these other foundation stones as well if it is

going to be fair; that is, an alert and responsible legal profession, aided by a legal aid plan such as we have in Ontario, and members of the provincial Legislature who are interested in these problems.

**Mrs. Campbell:** There are not too many of us.

**Mr. Vice-Chairman:** On that point, Mr. Minister, I think it is incorrect to say that members of the Legislature are free to tour any provincial lockup. They have the right to tour any provincial institution, but not individual lockups. This came up during the last Solicitor General's estimates and we were told we do not have that right.

**Hon. Mr. McMurtry:** Not individual police lockups, no.

**Mr. Vice-Chairman:** Any further questions?

**Mrs. Campbell:** I do not think we touched on the matter of transcripts which was raised. I do not think the Attorney General has answered.

**Hon. Mr. McMurtry:** The matter of transcripts: We were talking about the case in Kingston about which Mrs. Campbell was very concerned, where there was an undue delay that caused a considerable amount of embarrassment to the administration of justice.

Of course, what we are trying to do—and the Court of Appeal has been very involved in this—is to encourage lawyers in both civil and criminal cases to order only portions of the transcript that are really relevant to the appeal. You may have a trial that lasts for weeks, and with this phenomenon of longer trials in recent years it is particularly important that the amount of the transcript that actually gets to the Court of Appeal be cut down. In the great majority of cases it is only a small portion of the transcript that is relevant to the appeal. This is one area in which I think we have made some progress.

The appeals do get on, I think, reasonably expeditiously. I have had conversations with the chief justice of the province which would indicate that the Court of Appeal is more current now than it ever has been. There are cases where there have been unfortunate and perhaps unnecessary delays with respect to the preparation of transcripts, but I do not know that this is a significant problem. It will always be a problem. I don't know whether the Deputy Attorney General or the director of courts administration would like to add to anything I've said.

12:30 p.m.

**Mr. Leal:** Perhaps only this: At the last meeting of the bench and bar committee, which is the chief justice of Ontario's committee to which statistics are presented on a monthly basis, it was indicated by the chief justice with regard to the case load in the Court of Appeal that it is falling a little bit behind this term because of the lengthy appeal involving the dredging case. However, as the Attorney General has stated, and it is quite true, on a year-to-year basis the Court of Appeal disposes of its appellate case load every year. There are no, or very few, cases that carry over from one term to another. They really are current.

**Mrs. Campbell:** The Court of Appeal is not the only court of appeal. I wonder what it is like in other areas where there are appeals from lower courts but not to the Court of Appeal.

**Hon. Mr. McMurtry:** The Provincial Offences Act has relieved the pressure on the appeals to the county court in so far as summary conviction appeals from related provincial offences are concerned.

**Mrs. Campbell:** One hopes.

**Hon. Mr. McMurtry:** I don't think there is any question that it will amount to a substantial improvement.

**Mrs. Campbell:** What is beginning to trouble me, perhaps from what has been discussed here, is that I have drawn another matter to the Attorney General's attention and I don't think he has responded to me on it. What is the effect of a court order or judgement in this province today? I always thought it had some bearing on what we were all about.

**Hon. Mr. McMurtry:** I don't have the complete answer to the question you referred me to the other day—I'm awaiting a report—with respect to orders made in the Ottawa area for treatment and mental assessments, not only for juveniles but also for young people. It presents an interesting problem. Mr. McLeod has just arrived and he may be able to assist us with this.

One question that immediately came to mind was what jurisdiction does a court have to order another institution to provide facilities? That issue troubles me a little bit and I'm not sure of the answer.

**Mr. McLeod** has advised me that the matter is under very active review and that we will have something to say about it shortly. The picture isn't entirely clear at the moment, but there is that overall issue, although it is not necessarily related to this

specific instance. It's something I will get back to you on very shortly.

**Mrs. Campbell:** I would appreciate it. You say that, first of all, the police can question judgements, and now hospitals can question judgements, and we are getting to the point where almost anybody can quarrel with a judgement or ignore it.

I think it's time we took a look at just exactly what a judgement means. Often during the course of these proceedings, I have the feeling that perhaps we are not all as concerned about civil matters in the administration of justice as we are about the criminal matters, although I agree there is a greater urgency in criminal matters.

Another matter I wanted to raise is that in the estimates book we do have a little bit about a court I find is often neglected in these estimates; that is, the surrogate court. I'm not talking about the trial aspects but rather about the backlogs in estate matters and so on. Perhaps they are not important in the scheme of justice, but are there inordinate delays in getting appointments to pass accounts and that sort of thing, which is not dramatic but which does have some significance to members of the public?

It seems to me that in your book—you indicate a little bit by the lack of any real content that perhaps the surrogate court is not regarded as important in the scheme of things as other courts. If it is, it is in the cases which relate to the disposition of civil cases rather than the administrative aspect, as I suppose you could call them, of that court.

**Mr. Leal:** I can't be too helpful except perhaps to use the old maxim that "the squeaky wheel gets the grease." We hear nothing from the surrogate court.

**Mrs. Campbell:** I can understand. In the case of wills, often the person who might be most interested is no longer with us.

**Mr. Leal:** We have amended the surrogate court tariff. We have had a look at the surrogate court rules.

**Mrs. Campbell:** I really wasn't interested in the tariff. I was interested in knowing if there is a backlog in these matters. We don't have any statistics?

**Mr. Leal:** No. I can say quite candidly that during my tenure as Deputy Attorney General we have had no indication from the practising bar or the judges out there that the surrogate court, either on its litigious side—that is, contested wills—or on the estate administration side dealing with passing of accounts and that sort of thing, has any problems. None is being brought to our attention.



**Mr. Lawlor:** There are two judges in the county of York seconded to the surrogate court, aren't there?

**Mr. Leal:** Yes. Of course, in other counties the county court judge, as you are well aware, does all the surrogate court work.

**Mr. Lawlor:** I have several matters left, a kind of cleanup operation. I'm sorry, were you not finished?

**Mrs. Campbell:** No. I wanted to refer to another aspect.

When are we going to do something about payments to jurors and so on? In a lot of ways our system has been somewhat financially enriched, but I have a great feeling for jurors because I think they are treated like opposition members in this House. I feel that if we don't regard them as a necessary part of the function, somebody should say so. When people are financially embarrassed as a result of serving on a jury, it is something I find totally unacceptable. Year after year we have raised the question and year after year we falter along.

12:40 p.m.

**Mr. Lawlor:** It is particularly aggravating when individuals lose their jobs. There are actual cases—and I don't think there is any protection under our laws, under civil liberties or otherwise—where a man is fired because he can't attend to things because he is performing a civic duty.

I go some distance in saying that it is one of the few things left in this Commonwealth that requires sacrifice on the part of individuals. The scale is too low—there's no question about that—but full compensation is probably not desirable either for that particular function.

**Mrs. Campbell:** I feel that at least their costs should be covered and they are not.

**Mr. Lawlor:** Hotel and travelling expenses?

**Mrs. Campbell:** As a case in point, a woman was on jury duty for a rather protracted period of time. She had to use her car because she came from an outlying area of Metropolitan Toronto. By the time she had paid for the parking and her lunch, they owed her a considerable amount of money.

I really don't think people should be asked to make sacrifices to that extent when other areas of the system have been somewhat enriched—not adequately; I'm not saying that—if they are a necessary part of the system. They are all patted on the head and told what great people they are, that they are performing a civic duty and so on, but that wears a little thin after they have been there for some period of time. They have to pro-

vide somebody to look after other services, they have to pay for parking in an area where you might as well rent a hotel room for your car by the time the parking fees have been paid, and this kind of thing. It is niggardly if we think the jury system is appropriate. I would like a comment on that.

**Hon. Mr. McMurtry:** Two issues have been raised. One is the concern that no juror's job be jeopardized because of jury service. This may have happened in the past. We are introducing amendments to the Juries Act to make it clear that it would be an offence for any employer to dismiss a juror because of jury duty.

With respect to compensation, of course, this is a matter that has come up frequently. As you all know, we did amend the procedures—I forget whether it required legislation; I think we did it by regulation—to increase the compensation to \$40 a day for any juror sitting past the first two weeks or 10 days, so that it would be \$200 a week. Beyond that, we don't have any specific plans at the moment.

Again, it's a question of cost. First, I don't think you can place a value on jury duty. Secondly, I think most individuals regard it not only as a form of civic responsibility, but it has been my experience in talking to jurors that the vast majority of them have thoroughly enjoyed the opportunity of serving as jurors. Most of the complaints I receive are from people who have come back and forth over a period of two weeks and have not been selected to actually serve on a jury. In my personal experience, that's where most of the discontent comes from.

Fortunately, most companies and most union agreements provide for salaries to continue if a person is away on jury duty. It really boils down to a relatively small percentage of jurors, those who are self-employed and whose losing two weeks from their business responsibilities or from running a little business will have a very serious adverse effect on the business. It is my understanding that where there is economic hardship, people are allowed to serve not necessarily at the time they are called but at some later date.

Maybe Mr. Campbell can tell us whether our amendments to the Juries Act contain any provision for the juror's being released on the grounds of economic hardship. I'm a little fuzzy at the moment as to whether that is a ground for being excused altogether.

**Mr. A. Campbell:** There is nothing specific in the amendments with respect to the question of economic hardship to a prospective juror in fulfilling his role as a juror. There is,

however, a general judicial discretion in extraordinary cases which would allow somebody to be excused from jury duty if, in the view of the judge, there would be a great injustice to that person by virtue of his having to serve on the jury. There is a general judicial discretion but it hasn't been specifically addressed in the amendments.

**Mr. Leal:** Mr. Chairman, perhaps I could add one thing to that. As I recall the amendment, for the first time in our system it provides that a juror may be excused by the judge on the grounds that his serving would cause hardship to a third party. If you can visualize a small business, for example, where a burden might be cast unduly on a third party by the first party's serving as a juror, the judge may excuse the juror.

There are also amendments dealing with lifting the age limitation. They will give the more senior prospective jurors an opportunity to say they don't want to serve, but it will also give them the opportunity to serve if they wish. That applies to blind persons as well.

I understand these amendments now in process—the bill hasn't been introduced so I don't know exactly at what stage they are, but these things are coming up—don't deal with the point the member for St. George raised, the general question of compensating jurors over and above what the Attorney General has discussed, the increase a year and a half ago to \$40 a day after the first 10 days of service.

**Mrs. Campbell:** Maybe they cause the delay. They want to sit for the 10 days so they can make up their losses from the first week.

**Hon. Mr. McMurtry:** In the dredging trial where Mr. McLeod represented the crown, because we knew it was going to be a very lengthy trial the jurors were asked to write out any reasons why they would suffer personal hardship because of their service, and a number of jurors were excused on those grounds.

12:50 p.m.

Mr. McLeod just told me this was also the subject of some questioning by counsel for the defence. People were excused on those grounds because nobody wants to have an unhappy jury, a jury that is not prepared to serve and make a commitment to the administration of justice.

While it is an issue that comes up from time to time, I quite frankly do not regard it as a major issue so far as the administration of justice is concerned. If you believe it is,

I think you are mistaken. The fact is that the overwhelming majority of jurors is quite prepared to serve.

Given the need for resources which the administration of justice always faces, when it comes to adding several million dollars in order to substantially increase the minimal amount given to jurors for that first two weeks of service—and I think this is what we are talking about in most cases—the millions of dollars which would be necessary to increase that to a reasonable amount, I just don't think it is warranted. I really don't. I have said this publicly on a number of occasions.

I just happen to be one of those old fashioned people who thinks individuals in the community bloody well have a responsibility to serve the community in capacities such as this. That may be an old fashioned view, but is one I happen to hold.

**Mr. Lawlor:** It's all right to serve the Commonwealth. It's just that the wealth isn't very common.

**Mrs. Campbell:** Exactly.

**Mr. Lawlor:** That was a good statement. I'll keep that one.

**Mrs. Campbell:** The last question I wanted to raise is have you had discussions with the law schools? I perceive a growing problem with young lawyers who perhaps really haven't had experience in drawing orders. Often the orders don't reflect the order or judgement of the court.

I had one case, an aberration as I assumed it, which really caused me to wonder if there were variations across the province in the training of court officials. It was a case where the appeal period had gone by long ago. I looked at the order and it was a matter of someone, in the statement of claim, claiming partnership, and the order was a judgement in accordance with the writ of summons and statement of claim filed and served, which obviously didn't get us to an accounting and which obviously didn't get us anywhere. It took me, I think, about two years to get that piece of paper set aside, as opposed to the judgement.

Recently I have been getting some of these papers which do not appear to reflect the endorsement or other records we have on the transcript. I wondered what training there is. One of the cases I took up with Mr. Perry, because it happened to fall within his jurisdiction. Is there any problem these days with the orders or judgements not accurately reflecting the actual order or judgement?

Mr. Leal: Mr. Chairman, I know of no such problem. The starting point with this, of course, is that the jurisdiction and responsibility for settling the form of the order made by the court rests primarily with the registrar or the clerk of the county court system.

Mrs. Campbell: That's true.

Mr. Leal: The member for St. George and I have vivid recollections of whiling away an afternoon with the late Helen Palen, trying to settle an order with her. Any lawyer who got anything in an order that she didn't agree with was really a unique bird, I'll tell you.

Mrs. Campbell: Yes, indeed. You are quite correct.

Mr. Leal: I can go no further than that. The extent to which orders don't reflect the decision of the court surely must be the primary responsibility of the registrar of the court.

Mrs. Campbell: That's what I concluded. In the first case to which I had reference, central office did not have anything to do with it. They were appalled, Helen Palen being the one who was appalled. This came from one of the northern areas. It was a question then as to whether there was sufficient uniformity in the training of the people doing these things. But this particular case was a Toronto case. I was astounded in this most recent one. I have had others.

I was just wondering whether there has been a change in the function of the registrars since I was practising and since we had Helen Palen, or just what the situation is.

Mr. Leal: Mr. Chairman, I know the honourable member doesn't welcome a request for specifics, but I really have no knowledge of this. We would be glad to know of further details regarding the individual case.

Mrs. Campbell: All right. Mr. Perry has the information on the most recent one because, as I said, it dealt with a matter under his purview, but I will be glad to give it to you.

Finally, I wonder if I could have an answer to a question I put with reference to the administration of justice. I gave you material from Mr. Ruby. I hasten to say that at no time did I feel he was seeking my help. I think he is quite capable of handling his own cases. I wondered if you had a response to that. It concerned the Sunday legislation and the role of the crown.

Hon. Mr. McMurtry: Yes, I recall it now. He alleged that the crown attorney wished to proceed with other charges involving basically the same evidence upon which one of his clients had been—

Mrs. Campbell: I don't think it was an allegation. I think he was seeking the information, and the assurance of the crown was not the assurance of the crown but the assurance of the police officers to the crown. It was that matter I felt was of some significance.

Hon. Mr. McMurtry: I haven't had a report back yet on that.

Mr. Leal: Perhaps, Mr. Attorney General, we can undertake to reply in writing to the honourable member on that point. I apologize that we don't have it this morning, but we will get it for you.

Mr. Vice-Chairman: Did you have a question, Mr. Lawlor?

Mr. Lawlor: I have some, but they can be asked next day.

Mr. Vice-Chairman: Is the committee prepared to carry vote 1406?

Mr. Lawlor: No, don't carry the vote.

The committee adjourned at 12:59 p.m.



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No. J-10

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Attorney General

**Fourth Session, 31st Parliament**

Thursday, May 15, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC



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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, MAY 15, 1980

The committee met at 3:45 in room 151.

### ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (concluded)

On vote 1406, courts administration program:

**Mr. Vice-Chairman:** This committee is in order.

**Mrs. Campbell:** We are never in order.

**Mr. Vice-Chairman:** Margaret, you are giving the committee a bad name.

**Mr. Lawlor:** were you speaking when we adjourned?

**Mr. Lawlor:** I could say a few words. How long do we have now?

**Mr. Vice-Chairman:** We have an hour and 15 minutes.

**Mr. Lawlor:** I just have one remark. In *Liaison*, A Monthly Journal for the Criminal Justice System, there is an article by a Professor Donald Mohr on abolishing criminal law. The article says very little, but the concept is intriguing. I do not know whether Professor Mohr has developed his notions in a specific and adroit way. Perhaps Mr. Leal knows. Has he done extensive work in this area?

I would just draw the attention of the Attorney General (Mr. McMurtry) to what is being said in this regard. He says it is a cross-section of morality and tort law, that everything got tangled together and that it is time to clean house and start from scratch on what are really criminal matters, relegating the others, perhaps, to other statutes or to other areas of the law.

**Mr. Leal:** Mr. Chairman, I do not want to be unfair to Professor Mohr, but I think that article on abolishing the criminal law probably appeared earlier in some of the reports of the Law Reform Commission of Canada, when he was a member.

**Mr. Lawlor:** The next item I want to mention, and I will not take very long on it, is—well, let me ask you a simple question, Mr. Attorney General. How many meetings of the

Provincial Secretariat for Justice have you personally attended in the last six months?

**Hon. Mr. McMurtry:** I could not tell you. The last one was this morning.

**Mr. Lawlor:** That was to get ready for the estimates.

**Hon. Mr. McMurtry:** I can tell you that I attend the overwhelming majority of them.

**Mr. Lawlor:** You do?

**Hon. Mr. McMurtry:** Yes.

**Mrs. Campbell:** How many have been called?

**Hon. Mr. McMurtry:** They are called weekly. Occasionally they are cancelled if ministers get tied up, but the policy secretariat does meet on a regular basis.

**Mrs. Campbell:** You must be talking to yourselves. I tried to figure out who was in that policy field. There are three, aren't there?

**Hon. Mr. McMurtry:** We have Gordon Walker, myself, Frank Drea, Alan Pope and Norman Sterling. Norman Sterling is a parliamentary assistant to the Attorney General.

**Mrs. Campbell:** You don't need to tell us. He does yeoman service, Mr. Chairman.

**Hon. Mr. McMurtry:** Yes, he certainly does.

**Mr. Lawlor:** I was under the impression you had largely deputized that.

**Hon. Mr. McMurtry:** As an indication of the extent to which the policy field meets, look at the legislation introduced last year by our ministry and Mr. Drea's ministry. It all goes through the policy field.

**Mrs. Campbell:** I have always had the impression that what you wanted to do, you did. I doubt you need to go to the policy meetings.

**Mr. Lawlor:** I have four matters. Number three: I want to raise my perennial complaint against the sheriff's office in the county of York. I raised it last year and I experienced the same thing again this year. The complaint is simply that they close that office and close off executions around noon. Everybody takes off and they don't come

back until an hour or an hour and a half later. Everything is in virtual suspension during that period of time. Lawyers are such lambs. Why they don't complain bitterly about it, I don't know.

You arrive ready to close a transaction and the office is closed. I suppose the sheriff can answer that we should know all these things and not arrive at the wrong time, that we should arrive at nine o'clock or 10 o'clock, or whatever it is, in the morning. But let me tell, if you arrive at 11:30 and you put in your certificate and it goes into the basket and sits there for half an hour and they all go off for lunch and it is another hour, maybe an hour and 15 minutes, before they even begin to look at it, much less search it, you can spend half the day kicking around trying to bring a transaction to some consummation.

3:50 p.m.

I would appeal that they be required to keep at least a skeletal staff on during that period of time in order to convenience the profession. That is what we all exist for, for our constituents, that office along with others, and it cannot arbitrarily set up its own hours. I would be pleased to hear a response.

**Hon. Mr. McMurtry:** I recall your raising it before, Mr. Lawlor. My understanding—and it was just confirmed by a brief exchange here with Mr. McLoughlin—is that situation does not apply at the present time, that the office does not close between 9:30 a.m. and 4:30 p.m.

**Mr. Lawlor:** Hell, I was in three weeks ago and got hung up. I should have been talking to you instead of complaining in the hallway to myself and saving it up. If that doesn't apply any more, so be it.

**Hon. Mr. McMurtry:** We will look into it because we had been assured that problem, to the extent it existed, had been rectified.

**Mr. Lawlor:** Do you agree with me that it should be open throughout the day?

**Hon. Mr. McMurtry:** Yes, absolutely. I agree with you absolutely.

**Mr. Lawlor:** The final matter has to do with a possible amendment to the Mortgages Act. It does not have to do with foreclosure proceedings in which people appear before the court, but with power of sale proceedings. Under the law as it presently stands, an individual mortgagee may proceed under power of sale, giving the proper notices and with the time limitations which are very much foreshortened compared to foreclosure, place the property on the market through

his own agency and sail merrily ahead selling the property, sometimes selling it under its value.

Of course, he is responsible, if he sells it for more than the amount of the mortgage and the costs accrued, to make an accounting to the persons who are losing their homes, and I suppose he can be called to account if they must get some appraisals with respect to it. But the person in that position, the mortgagor who is in default, is usually so distraught—he is losing his home—that he hasn't the wherewithal to consult a lawyer as to what his rights may be. Even if he did, how is a lawyer practising out there to determine whether that price is the best price that can be obtained on the market without himself hiring an appraiser, paying \$150 to \$250 to have an appraisal done—and that is what they cost these days? The person who cannot pay his mortgage is not likely to be able to pay an appraiser.

Some procedure seems to me to be necessary, not in all instances, but so that an individual in that position may apply to the court. A judge should take over the sale proceedings until he is reasonably satisfied on the evidence presented that the sale is fair, just and equitable in the circumstances. There is an hiatus in the law with respect to that particular problem.

The second point I would make is that the court, also on application, be given the power of discretion to extend the time before a sale can be proceeded with. Neither of those two things presently exist.

As to the present situation here with mortgages, as you know, maybe it is being alleviated. I will say this much: Once those oil prices escalate, so will the interest rates, in my opinion. We think they have been high; they are going to be higher, although they may be falling at the moment and we are beginning to feel some kind of slackening off. We are grateful for that, but we can be too grateful for it. The reverse situation could easily occur in the near future, and the repercussions upon homeowners undermined by power of sale proceedings would be very great indeed.

I would ask you to take those points with regard to that particular statute into consideration with a view to possibly amending it.

**Mrs. Campbell:** Mr. Chairman, before the Attorney General answers, I raised this matter earlier in these estimates and was advised that the matter was under, I think it is, active study by the law reform commission. There are studies and then there



are active studies. I do not know which this is.

I would go further than Mr. Lawlor has gone. I have a case where two older people were going to Florida for a vacation. They mailed their cheques, postdated cheques. Those cheques were never received. They came back to find their house had been sold. With respect, I think it has to go deeper than those things suggested by Mr. Lawlor.

The other thing I mentioned was mobility, particularly at a time of high unemployment, where they do not get the notices. In some cases they have certainly sent the cheques, according to the story I get, but they lose everything.

If you do not mind, I would like the answer to include something a little more composite than what Mr. Lawlor mentioned.

**Mr. Lawlor:** The present procedures are very off the cuff. They are probably very much out of date. The protection afforded is certainly not very great. Unscrupulous mortgagees can take advantage.

**Mrs. Campbell:** I also asked, if the Attorney General remembers, that somebody take a look at the sales. We have heard about the increased number of sales, but in one case that was given to me, I think there were three transactions on the same property on the same day. I think there is a good deal going on in that area that really merits an investigation.

**Mr. Lawlor:** There is one further thing, on procedure. If you are going to do it at all, you may as well do it pretty well. This has to do with the power of sale procedure itself.

Once having served the notice—and they are required to do it by registered mail—then it falls in. I mean a certain number of days may be given—not very long; 30 days or 35 days—and then the property is deemed to be vested in the mortgagee. Subsequent to that, you may find that an execution has been filed at the sheriff's office, but the sale goes forward in the face of the execution. It goes forward despite the execution. Of course, it cuts out subsequent mortgagees and has a number of other effects. Whether or not it cuts them out, the execution is taken by practising lawyers as being an established fact. There is case law on it.

I think it might be a very good idea to clarify that. Falconbridge does mention it in his great book on mortgage law, in his most recent edition. In other editions I looked at, he does not. It has just been left out, an oversight, as to what is the effect

of an execution, prior to the actual sale taking place, hitting the sheriff's office. You would think that the execution would bind since the sale has not gone through and since no fee simple has been conveyed at all. In normal circumstances this would be the case, but as I said, the case law in a couple of cases says no, that is not so.

It would be better to have that in black and white so there would be no doubt about it, clean up that particular point of law in case someone should challenge it some day.

4 p.m.

**Mr. Kerr:** Is the creditor not served with a notice in that case?

**Mr. Lawlor:** There is no creditor at that time. That arises two days later.

**Mr. Kerr:** This is after the sale or before the sale?

**Mr. Lawlor:** This is after the notice is served but long before the sale. It is sometimes seven or eight months before they can get the property moved. They are sitting there in between in some kind of limbo.

**Hon. Mr. McMurtry:** Perhaps the Deputy Attorney General could give us an update as to where this matter stands.

**Mr. Leal:** It is perfectly true that the procedure for foreclosure and sale is extensively dealt with in the Mortgages Act. It has been quite properly pointed out that most of that procedure is subject to the review of the court. Indeed, it is done by the court. Where you have a power of sale taking place, pursuant to the agreement in the mortgage, it is not subject to court review. That is Mr. Lawlor's point.

**Mr. Lawlor:** I do not want it automatically subject to review, but only on application.

**Mr. Leal:** I understand that.

Perhaps I could speak to the general point and refer to the 13th annual report of the Ontario Law Reform Commission, a draft of which states:

"In past years three substantial research papers have been prepared on the subject of basic principles of land law. During this past year a comprehensive research design has been submitted for the project on the law of mortgages. Arrangements for resumption of research on the mortgages project are underway."

I would be pleased to bring this to the attention of the chairman of the Ontario Law Reform Commission in connection with the matter that Mr. Lawlor raised. I can tell him that this has been long in coming and we were talking about this even when

I was a member of the commission three and a half years ago.

**Mr. Lawlor:** It must be the longest outstanding work the commission has been doing, is it not?

**Mr. Leak:** Yes.

**Mr. Vice-Chairman:** Next on my speakers' list is Mr. McKessock. He has left his chair for a moment.

**Mr. Warner,** do you have a question?

**Mr. Warner:** I would appreciate some information. It may be more instructive to me than to my learned colleagues because I find it a little perplexing. I would like you to help with this.

A case was brought to my attention recently. I can't remember the names, but a young woman had provided evidence for the crown in a hashish oil situation and because of that received a lesser sentence than two other persons. One was not present—had gone somewhere—and the other person received what I understand was the minimum that can be handed out, a mandatory sentence of seven years.

This brought to mind the question of plea bargaining. I wonder if you would be kind enough to explain to me the general ground rules about plea bargaining as it occurs in our system in Ontario.

**Hon. Mr. McMurtry:** As far as the principles related to plea discussions are concerned, as a prelude to my response I should point out that the case I think Mr. Warner refers to is a federal drug prosecution that took place recently and which received a great deal of publicity. Apparently, one of the accused—I have only the news reports to go by, as it is a federal prosecution—agreed to give evidence for the prosecution. As a result, I understand the crown did not proceed against her on the most serious charge of importing, which does carry the minimum seven-year penalty of incarceration.

The fact that a co-conspirator gives evidence for the prosecution has long been recognized by the courts as something that can be properly taken into consideration in the exercise of prosecutorial discretion. The charge for which the person is prosecuted may be a reduced charge because of the co-operation given to the prosecutor's office.

The rationale behind that, I think, is quite legitimate. It is in the public interest to bring offenders to justice. If it is necessary to utilize the evidence of a co-conspirator to achieve that end, it has been recognized by the courts as appropriate to proceed as far as the crown witness is concerned, with a lesser charge which normally carries with it

a lesser penalty. On occasion it is even necessary for the crown, with the public interest being the overriding consideration, not to proceed at all if that evidence is essential to produce a just result.

That issue is somewhat separate from the general issue of plea discussions, although I understand that obviously there is a relationship. I do not like to use the words "plea bargaining" because I think they give an unfortunate impression of what the whole process is about.

**Mrs. Campbell:** That is what it is.

**Hon. Mr. McMurtry:** It suggests that the morality of the marketplace is being employed. That is not acceptable as far as prosecutions conducted by the Ministry of the Attorney General in this province are concerned.

We have set guidelines for our crown attorneys in respect to plea discussions. The first guidelines I am aware of were set by my predecessor, Dalton Bales. I set some which were an amplification or a slight refinement of Mr. Bales' guidelines. I can obtain a copy for you. I do not have the guidelines in front of me.

These guidelines set out a number of principles that should be employed by a crown attorney in each case. They do not deal with the issue of an accused person becoming a crown witness. They deal with the issue of plea discussions generally.

First, the discussions must be on the basis that they cannot be influenced in any way by expediency, such as a heavy court docket or any other pressures on the crown attorney's office. They must be conducted at all times according to what is in the public interest.

Second, the guidelines make it clear that the process should be as open as possible. I think a great deal of unnecessary misunderstanding has been caused by the appearance of these discussions being behind closed doors, between the lawyers and sometimes the judge. The public does not really know what happens other than that the person pleads guilty to a lesser offence and a penalty is imposed.

4:10 p.m.

Our guidelines contain instructions that the relevant facts be put on the record in open court. For example, if a person is charged with murder but pleads guilty to manslaughter, the reasons why the crown attorney is accepting a plea of guilty on the lesser charge should be put on the record. If there is some discussion with respect to

sentencing, generally speaking the crown attorney will give his or her view as to a range of sentence. But it's important that this be put on the record.

Of course, in some cases it is a difficult judgement call; for example, whether to proceed on the more serious charge when there is a real possibility that there will be no conviction at all, as opposed to accepting a plea of guilty to a lesser charge. Again, a decision must be made which is in the public interest.

To give you a "real life" example, where the crown attorney involved is no longer a crown attorney, there was a case which attracted a certain amount of attention in this area because the deceased was a police officer. It was a very serious matter and it was a question of whether to proceed on the capital offence or accept a plea of guilty of noncapital murder. It was at a time when there was still capital punishment for the murder of a police officer.

In this particular case, the crown attorney was faced with the decision because, as he assessed the evidence, there was a possibility the accused might be acquitted entirely, which in his view would be an entirely wrong result. He felt very strongly about this. Although the risk was not great, it was there. He had to make the judgement as to whether it was worth running the risk of having this person acquitted entirely, or accepting a plea of guilty on the noncapital murder charge. He felt society's interests were best served by accepting that plea of guilty. I can only speculate about what the defence counsel thought. He probably thought there was a chance the accused would be acquitted entirely, but if he were not, he would be convicted and possibly executed, as opposed to receiving a life sentence.

Human judgement is brought to bear. I think it must be stressed that there is nothing unique about going through a trial that guarantees you will achieve a just result. It is not as if you have all the facts and put them into a machine, go through the whole process and get a just result. You are dealing with a system, of course, which is influenced by a great many human uncertainties. You may have witnesses whose memories start to fail after a period of time for any number of legitimate reasons. Some people are just very bad witnesses. A very honest individual, for example, could be a bad witness in court just because of the fact that he can't function effectively in that sort of atmosphere.

I think the question you have raised is very important, Mr. Warner, because I think there is a great deal of public misunderstanding about the process. What I am trying to say is that if you have an experienced crown attorney—and we assume the accused has an experienced defence counsel—often you can arrive at a more just result by agreeing on a plea than by going through a long trial with all the uncertainties that a trial entails.

Be that as it may, our instructions to the crown attorneys are that the matter must be viewed in the light of what is in the greater public interest. We stress the fact that it should not be a matter of expediency and that, as much as possible, the reasons should be put on the record to avoid the public misunderstanding that there has been some kind of "deal" worked out which may not be in the public interest.

It is an issue that does concern me greatly because of what I perceive to be a degree of misunderstanding about the process.

**Mr. Warner:** I appreciate your explanation. I just have two supplementaries. One is to ask whether you are satisfied with the present situation, the plea discussion guidelines. Are you satisfied that it works as best it can and that there shouldn't be any alteration of those guidelines?

**Hon. Mr. McMurtry:** I am always prepared to accept suggestions. I certainly never regard anything as achieving the absolute in perfection, but those guidelines were amplified a little bit, by me, two or three years ago. I think they are good guidelines. I can't think of any more satisfactory guidelines at the moment. We have put a good deal of thought into them.

I would be happy to send you a copy of them, because they are a little more detailed than I have suggested. I'm sorry I don't have a copy in front of me.

**Mr. Warner:** The second question is whether the plea discussions between the two lawyers involved are always conducted in the presence of the presiding judge.

**Hon. Mr. McMurtry:** It is usually not done in the presence of the presiding judge.

**Mr. Warner:** Is that good or bad?

**Hon. Mr. McMurtry:** It is often better that it not be. First of all, the judge isn't bound by any understanding that might be achieved insofar as a sentence is concerned. It is only in a small minority of cases that a judge is involved. I think the judge has to be detached from the process to some extent. There is a good deal of very frank



discussion that goes on, of necessity, as to the strength or weakness of a particular case, that a judge should not be part of.

**Mrs. Campbell:** The Attorney General will recall that I drew to his attention a case which appeared in the newspaper where two defence counsel were subpoenaed. It was a question there, as I understand it, that while the crown was satisfied that in one case manslaughter was appropriate and in another case conspiracy to wound, nevertheless he was holding out for murder in both cases in order to get evidence against a third person.

Have you had an opportunity to investigate that case since I gave it to you? It may have been a week ago or two weeks ago—I'm not sure—but you were going to look into it.

**Hon. Mr. McMurtry:** I must admit my recollection isn't entirely clear at the moment as to the details of the case. I do have a recollection of your bringing it up.

**Mrs. Campbell:** The crown attorney was one Mr. Lang, you will recall, from Lambton.

**Hon. Mr. McMurtry:** Yes. I obviously don't know anything about it now, but I will pursue it and let you know.

**Mrs. Campbell:** I would like that because I think it perhaps indicates that sometimes the perception is more accurate than not.

4:20 p.m.

**Mr. McKessock:** Mr. Minister, my question has to do with the problem of the length of time involved in getting a court decision. I did write to you about this back on April 18.

**Hon. Mr. McMurtry:** We had a personal conversation about it as well. You are concerned about what to do when a judge has reserved judgement for a prolonged period of time. I think I had a suggestion or two at the time.

**Mr. McKessock:** Right. I am not too familiar with how the courts work or why it takes so long. Maybe you could fill me in a bit.

Just to give a little background, this involves a constituent of mine, a transport operator, who didn't oppose an application for a licence by one of his competitors. His competitor obtained the licence, it appears, through a bit of false pretence.

Everything wasn't presented at the first hearing, so it wasn't opposed. After he obtained the licence, he infringed upon the area of my constituent. At that time, he

went to the board to apply for a rehearing, which was granted. The application for a rehearing was granted on November 15, 1979, but it has never taken place because the opposition to my constituent applied for a review.

**Hon. Mr. McMurtry:** A judicial review.

**Mr. McKessock:** Yes, whatever you call it. So it didn't take place. This review was heard on December 12 of last year, but to date nothing has been heard about it. Since that time, the transport operator in my area has had to lay off three drivers and three warehousemen, which represents a quarter of his work force, because this licence, which probably shouldn't have been granted, hasn't gone to a rehearing because of this four-month delay on this court decision.

Why does it take four months?

**Hon. Mr. McMurtry:** I can't answer that without knowing all the facts. Even if I knew all the facts, I could only speculate. I don't know how difficult or how complicated the issues may be that the court has to deal with. There may be a number of very valid reasons for this delay.

As I indicated to you, I think there is a route that can be pursued by counsel for either of the parties, and that is to write to the chief justice of the high court and indicate their concern with the delay. I recognize that lawyers may be a little reluctant to do this, because they might feel it would prejudice their client's case if one party appeared to be complaining about the delay. Sometimes lawyers are overly sensitive about offending judicial sensibilities.

The lawyers for your constituent are in as good a position as anyone to know whether the delay is unreasonable. Quite frankly, my view is that, if they feel the delay is unreasonable, they should communicate their concerns to the chief justice.

In the past, lawyers have always said, "If I write, my client may be prejudiced, because this may annoy the presiding judges." I personally think this is highly unlikely. You are probably dealing with a review by three judges and I just don't think the outcome of the case is going to be affected by the fact that one or the other party has communicated his concerns to the chief justice. He would normally, of course, send a copy to the other lawyer or the other parties.

Obviously the client in this case has a very serious economic problem related to the delay, and I think some sort of communication might well be merited. As I recall our conversation, I even suggested to you that, if you want me to communicate your personal

concern, having heard from your constituent, to the chief justice, I will be happy to do so.

**Mr. McKessock:** I did write you a letter pertaining to it.

**Hon. Mr. McMurtry:** If I recall, it is a matter that is before the Ontario Highway Transport Board.

**Mr. McKessock:** It will be before the highway transport board—

**Mrs. Campbell:** If you ever get it out of the court.

**Mr. McKessock:** Yes, if we can get a decision from the court, I'm just not familiar with why it takes so long. How many court cases do they hear before they finish one? We are waiting for the decision on this one that was heard four months ago. How many have been heard since then? Maybe somebody else is waiting too.

**Hon. Mr. McMurtry:** There are probably three judges and there may be complicated issues. Of course, because of the work load, judges don't stop all other work while they are reaching a decision. In the best of all possible worlds it might be nice to have a case where, every time a judge or a panel of judges heard a case where a decision had to be reserved, they suspended all other work until they reached a decision.

**Mrs. Campbell:** They would love it.

**Hon. Mr. McMurtry:** I am not so sure that would work out very well, but it might avoid the problem you are talking about. I don't think any jurisdiction will ever have the judicial resources to make that happen.

What normally happens is that the Supreme Court judges—is it every six weeks?—have a judgement week when they do not sit. As I understand it, during one out of every six weeks they do not sit, so that they have an opportunity to devote a week to writing any judgements that may be outstanding. I know the chief justices attempt to build in this time in order to avoid these delays.

**Mr. McKessock:** Another problem is that it is quite often a delaying tactic. The opposition to my constituent already has his licence under which he is operating, but under which he may not be operating once this appeal is heard by the Ontario Highway Transport Board. If it is a delaying tactic, it is great for him if it takes months and months.

**Hon. Mr. McMurtry:** If it's a delaying tactic—and you are talking about the fact that a judicial review was asked for—the chances are that the decision would have been given some time ago because the court would have

recognized it as a delaying tactic. If it was a frivolous application and if there was no merit in the matter, I am sure the court would have given the decision a long time ago.

**Mr. McKessock:** It appears that it is a delaying tactic, because as soon as the Ontario Highway Transport Board hearing was agreed to, this application for a review came in and put a stop to the whole thing.

**Hon. Mr. McMurtry:** Yes, that would happen. The applicant for the review obviously, on the advice of his lawyers, thought he had an arguable case to prevent the rehearing. I am sure we would hear a somewhat different version if we heard the other side.

I am only speculating, but they might well come before us if they had the opportunity, if it were appropriate, which it is not, and say, "Look, the board really acted quite unfairly in forcing us to go through a rehearing, so we want to review their decision in the courts." There are usually two credible sides to most of these issues.

4:30 p.m.

**Mr. McKessock:** I have been sent reams of material on this matter, and after reading it I have to come down on the side of my constituent. Of course, I have heard only the one side.

**Mr. Lawlor:** That's how you have to do it.

**Mrs. Campbell:** We have a tendency to do that.

**Mr. McKessock:** Thank you for your explanation. I will pass it on.

**Mr. Lawlor:** If I may say so in my usual unhelpful way, Mr. Justice Howland mentioned this in his report, which I read the other day. He said: "During the year the Ontario Courts Advisory Council adopted a policy applicable to all three levels of the court that any reserved judgement should normally be delivered within three months. If any reserved judgement is not delivered within six months, then the chief justice or the chief judge of the court concerned should consider granting the judge"—in this case, there are several judges—"relief from his normal duties so that he may be enabled to devote himself to completing it." That is what is laid down among the judges themselves.

**Hon. Mr. McMurtry:** I think that is helpful.

**Mrs. Campbell:** If it is delayed for a year, don't you have some recourse?

**Mr. Lawlor:** I think the judge is fired.

**Mrs. Campbell:** We went to that point in a case and we finally got the judgement, after one year.

**Mr. McKessock:** That is an interesting piece of information. The trouble is, we also brought this up before the estimates of the Ministry of Transportation and Communications and, of course, they would not discuss it at all because it is before the courts. It is delayed all the way down the line.

**Mrs. Campbell:** They have learned from the Attorney General.

**Hon. Mr. McMurtry:** I think Mr. Lawlor's interjection was helpful because it demonstrates the concern the chief justice has about delays and the awareness the court has of the problems this creates for litigants. While these delays still occur, notwithstanding the position adopted by the chief justice, I think every reasonable effort is being made to avoid them.

Vote 1406 agreed to.

On vote 1407, administrative tribunals program:

**Mrs. Campbell:** How much time do we have left?

**Mr. Vice-Chairman:** Another half-hour.

**Mrs. Campbell:** I was not going to comment on this particular vote, so I leave it to Mr. Lawlor.

**Mr. Lawlor:** I think my colleague had something.

**Mr. Vice-Chairman:** Mr. Warner did have something concerning the Ontario Municipal Board.

**Mr. Lawlor:** I think it was with respect to group homes and the recent decision handed down which appeared to be highly discriminatory against certain types of group homes.

My own position on it is that, again, this is a public agency which must be cognizant of the sociological implications of these homes and equally cognizant of the very severe restraints placed on them by the communities involved, the tendency—I have to use my words carefully—to reject such homes. I had hoped the municipal board would take a very broad and benign position with respect to them. My own position is that each of these cases must be judged on its own merits and each district considered individually, depending upon the number of group homes that exist in that community. Some of them get overloaded.

We all know the notorious case of Parkdale which has taken the whole load with

respect to patients' mental care, with discharged patients grouping around the Queen Street institution. People tend to discriminate about group homes for ex-prisoners or people coming out of various institutions, halfway houses or things of that kind, which is understandable on the part of the surrounding population, or with respect to retarded children, for instance—there is a good deal of animus in this particular regard—or the protection of property values. With respect to my own peculiar position in the riding of Lakeshore, there is concern about people who are former patients of the Lakeshore Psychiatric Hospital. Generally speaking, psychiatric patients tend to be discriminated against.

It is a natural, pathological fear that we all have of people who are a bit strange, people who are different from us. It is called the "scapegoat complex" in ancient Jewry. They managed to get rid of all their sins by driving a goat into the wilderness once a year. All their guilt went with it. Oh yeah? The same thing applies here. Therefore, a board of that kind has a very powerful responsibility.

I listened to Grossman Père—you know, in the artistic community there is Holbein Père and Holbein Fils, and it goes on like that. Well, Grossman Père once made a great speech in the Legislature about how atrocious this all was and how, as members of the House, we all had a very powerful responsibility to try to do something in our individual ridings to make our constituents aware of the need and of their responsibility and to encourage a sense of co-operation with respect to the placement of such individuals among ourselves.

We are so property conscious, so overloaded with bourgeois values of that particular kind, and it is getting worse, not better. I thought it was improving at the beginning of the century, that we were coming out of the 19th century syndrome on this subject, that our worship of the milch cow, the sacred bull, the Artemis of the many breasts was being overcome, and that a better sense of mutuality was developing in our communities.

It is not true. It is far more endemic, rooted. The basic fears of people in our society tend to revolve around the protection of the homestead and the little fortress. We build fences around ourselves.

I wrote a poem about this once upon a time. I won't ever do it again.

**Mrs. Campbell:** You should bring it.

**Mr. Lawlor:** With that in mind, I think perhaps consideration should be given—you



might do this in the Provincial Secretariat for Justice—to the fact that property values are such, apart from the natural fear of people who are different, particularly if people think that mental illness is a contagious disease. I am almost convinced that it is, personally. In a group of people, it only takes one person who is terribly upset to spoil the whole group. It is amazing how that infection spreads.

**Hon. Mr. McMurtry:** You sometimes see it in the opposition caucuses.

**Mr. Lawlor:** Yes. Sometimes too, I suspect, in the cabinet room. I hope you are not the rotten apple.

**Mrs. Campbell:** That's why we are all so understanding of these problems. We are all a little strange. We don't fear it.

**Mr. Lawlor:** That's right. We don't want to emphasize the awkwardness, but the point is we must not run away from it either.

That reminds me of the pianist, Victor Borge. He said, "Forgive my front, forgive my back, but that's the way I'm made."

4:40 p.m.

What I was going to suggest is that if that is the prime consideration—and it is; people living close by claim they lose the sale value of their property—then I would think that is a matter that should be well considered by the government, working through the Land Compensation Board, to take that into account and get reasonable assessments of the losses that could be incurred. That would probably ameliorate the situation.

If the problem of locating these homes in neighbourhoods—as I think is basically proper, so that the healing effect of neighbourhoods, theoretically speaking, can be felt instead of the alienating effects we were talking about—can be solved by money, then I think there is an obligation on the public realm to spend that money. I don't think there would be great sums involved. It would be some kind of compensation for losses resulting from the establishment of particular kinds of places in particular neighbourhoods. That's the only way it is going to be overcome. People dig in their heels and prevent the establishment of these houses.

The Ontario Municipal Board doesn't seem to be cognizant of these facts and doesn't seem to take them into proper account. I suppose it tries to saw it off at some particular point, but it saws the limb off at the wrong place and it falls. We leave

all these people as derelicts and the cost to the public purse of doing so is simply enormous. Whatever money would be paid out in compensation in the way I suggested would be compensated for by the money saved by the slow, peaceful and open integration of, say, ex-prisoners back into the community.

This has nothing to do with your estimates, but if we leave them derelict when they leave the prisons the discriminations against them with respect to employment, are gross, their chances in life are diminished to a decimal point and we leave them no alternative but to go back to a life of crime simply to sustain themselves and their families. We won't let them live among us in our neighbourhoods and we hound them, and we are asking for what we get in terms of recidivism and other things. That broader picture doesn't seem to dawn upon certain elemental types of minds.

I've said all I want to say.

**Mrs. Campbell:** You are right and I agree with you, but I think perhaps the ministry has to go deeper. One of the real problems, unfortunately, is with negotiations between the municipalities and the province in some cases as to their cost sharing programs, and to get into this kind of runaround thing. I think you would hear from the municipalities very quickly if the OMB took a position of that kind and left the municipalities to pick up a portion of the tab, as it does, in some of the group home situations.

You will recall one of our very difficult cases. The city of Toronto, I think, has always been very open to group home concepts of all kinds. Then we found a judge in Peel was sending virtually everybody to group homes in Toronto, and it turned out Toronto was supposed to pay for it.

I think it is really essential that those funding arrangements be resolved as well, but the philosophy of what you are saying, of course, is right. It is awful that some municipalities can just toss over their responsibilities and leave it to others who are a little more enlightened, a little more ready to accept, to pick up the pieces financially, and also to pick up the pieces of a life which has certainly been in disarray in one form or another.

**Mr. Warner:** First, Mr. Chairman, my apologies to the Attorney General: I didn't intend to leave so abruptly. I had to speak on agrologists, a subject about which I have great knowledge.

**Mrs. Campbell:** You? Next time I will listen to you on the warble fly.

**Mr. Warner:** We do our duty when we have to.

**Mr. Lawlor:** When you can't find any-body else.

**Mr. Warner:** That's right. I did appreciate the explanation the Attorney General was giving me on the plea discussion aspect. I will read Hansard when it comes through, and I would like to pursue it later on.

With regard to the OMB and touching on what Mrs. Campbell has raised, do you have a specific course of action that you intend to follow now that we have this stalemate situation? I understand the government's original intention was to try to persuade communities and to let communities themselves develop the will to amend their laws and allow group homes. That hasn't happened and now, of course, the Ontario Municipal Board has upheld that unwillingness.

Do you have a course of action you are going to follow now so we can get the changes which are needed?

**Hon. Mr. McMurtry:** I can't, of course, bind the government to any particular course of action. As to the recent decision of the OMB, I don't know the details of it, but I do recall reading some reports in the media. This decision may be appealed to cabinet and we may be dealing with it at that time, so obviously I have to be careful, if it has been appealed, not to indicate a bias one way or the other and not to say anything that might be interpreted as a bias in relation to this specific matter.

I am quite prepared to say that I endorse the concept of group homes. I am a long-time director of the St. Leonard's Society of Canada which, as you know, maintains an umbrella organization with respect to halfway houses for prison inmates, so my support for that concept is well known. I also understand the concerns of some people in the community, which are not only related to property values. People do have genuine fears of former inmates and people who have had problems with drug addiction. They have great fears of being harmed as a result of the presence of those individuals, and they are fears we can't belittle.

However, I support the general concept of this type of rehabilitation which, I agree, in many cases can only be done effectively in a community setting.

**Mr. Warner:** I don't want you to get the feeling you are being put on the hook, but if the decision is appealed to cabinet—and I think there's some likelihood of that—can we count on you?

**Hon. Mr. McMurtry:** He says, "I don't want to put you on the hook," and he says it all with a straight face.

4:50 p.m.

**Mr. Warner:** I understand your involvement in the community, and it's very good, it's very positive. I know of your support for the St. Leonard's society. I haven't had the same background in it that you have had; I'm just a plain ordinary member of St. Leonard's. I appreciate your position because some people don't have that view and don't take that position and it's a very good and positive one, but I would just like to state clearly to you that I hope you will do everything possible to make sure we move forward on this issue of group homes in the community. It is an issue that has been of great concern to many of us.

The original game plan of the government—which I understand and which I appreciate, quite frankly, and which I think was a good one—was to try to persuade communities to develop the will from within, but that isn't working in a lot of communities. That tells me that there has to be a different game plan now. You have to change the game plan.

I would urge you as strongly as I can to be very positive and to do everything you can. I am not going to ask you again how you are going to vote in cabinet, but do what you can to get this thing on track.

**Mrs. Campbell:** The next thing to ask is if you might be included in the deliberations. Then you would know.

**Mr. Warner:** Just send me a copy of the minutes.

**Mrs. Campbell:** Following up on that, one of the things that has bothered me ever since I came into this place is my role in making representation to cabinet when appeals are pending. I must say, initially I took the position that it was inappropriate; however, I found that it does seem to be a practice and, therefore, I have made representations on occasion. It really has been all right because I have never won yet.

**Hon. Mr. McMurtry:** I doubt that.

**Mrs. Campbell:** The Rose cottage, the Garden development, I have lost them all. It does bother me because, in a very real sense, while cabinet is a political body it is sitting with appellate jurisdiction. I wondered if that has ever been looked at or in any way clarified, because I think there is a distinct problem.

**Hon. Mr. McMurtry:** No, I think the issue you raise is a very valid one, but our role

really isn't an appellate one in the general or normal sense of that term. We don't have a transcript of the proceedings for example.

**Mrs. Campbell:** No. You don't give reasons either.

**Hon. Mr. McMurtry:** We don't perform as a court of appeal does with a transcript of the proceedings before it and, therefore, we don't like to refer to the cabinet or the executive council as an appellate tribunal. We have powers of review.

I think it is quite clear that we don't interfere with a decision of the Ontario Municipal Board unless we believe there is a pretty compelling reason to do so. Some of these decisions are very difficult ones. A great deal of time is dedicated to these issues. I don't think it's telling tales out of school to say that some of my colleagues are not altogether happy about even being asked to review decisions of the Ontario Municipal Board. It's a task that many, quite understandably, would just as soon not have. It really gets down to this: Do you allow the municipal board to be the final arbiter of these issues, subject only to review by the courts? While it would make our existence a little easier not to have that burden, I think we have a political responsibility to the people of the province to accept the burden of acting as a final appeal tribunal.

It's a difficult issue, no question about it.

**Mr. Lawlor:** It goes a little beyond that, in my opinion. Unlike the courts, unlike the judicial system, properly speaking, you have the power and authority, and you are expected by the Ontario Municipal Board itself to address missives, if you will, to it on public policy.

It is guided by that in the course of its deliberations. It makes reference to that in the course of any hearing it is having. They say, "Government policy is so-and-so." They don't like to run contrary to that, although they may do so.

**Mrs. Campbell:** Before they reach their decisions, they should get those missives.

**Hon. Mr. McMurtry:** A lot of the decisions are made within the parameters of general government policy. It would be relatively easy for us if the decision clearly flew in the face of a specific government policy, but government policy, of course, in many of these planning areas must be of a fairly general nature. The problem is with judgement calls within these general policy guidelines.

**Mr. Lawlor:** Nevertheless, I am not sure the municipal board is clued in to the numer-

ous statements by numerous ministers that I have heard with respect to the overall policy on group homes. I think they're living in an hiatus, since the decision came down the way it did. I have no high opinion of that board.

**Mrs. Campbell:** Oh, Pat. That's the most unkindest cut of all.

**Mr. Lawlor:** I have to make one exception, of course. How could I dream of saying anything that might be in the least detrimental to the erstwhile Mr. Singer.

**Mrs. Campbell:** I wonder if I could have one quick question on the Criminal Injuries Compensation Board. It seems to me I raised this issue the last time in estimates. It is in reference to children.

I have talked with Mr. Grossman and Mr. Perry about compensation in cases of child abuse. It has never seemed to me that lump sum settlements are a realistic form of compensation for what may have occurred to the child. I know the board is now getting into the field of the abused child, particularly the sexually abused child, because of the growing number of incest cases.

Has there been any attempt to make some sort of provision for review in these cases, so that assistance can be given to a child—be it professional or whatever is required—over a period of time, rather than making a lump sum payment which is out of relationship to the offence and the injury? Mr. Grossman was most interested in this approach and he said that he rather looked with favour on it, but I haven't heard of anything since that discussion. That was about a year ago.

**Hon. Mr. McMurtry:** I am not sure I entirely understand you. Perhaps you could give me an example of just what you mean as to the type of award the board might give in this type of case.

5 p.m.

**Mrs. Campbell:** I felt there could be a finding from the board that this child had suffered as a result of a criminal offence, that the child could be placed under review and watched over a period of time, that such treatment or such assistance be provided as might be needed, and then have the case come back for review.

**Hon. Mr. McMurtry:** Come back for an additional award for expenses that were not anticipated or something like that?

**Mrs. Campbell:** I was not thinking of an additional award particularly. If someone has been shot, you can normally work out some kind of compensation and some kind of



rationale, but where a child is subjected to abuse of one kind or another you do not really develop a knowledge of the extent of the injury except over quite a period of time.

Mr. Grossman, as I understood it, was going to discuss the matter with you or with Mr. Leal. He had had discussions with Mr. Perry as to how we could really help the child most effectively, rather than awarding \$2,000 or whatever and dismissing the case in that way.

I know there is provision for some review, but I do not think it has functioned in that way. It seems to me this is something that ought to be looked at.

**Hon. Mr. McMurtry:** There is provision to make interim payments or instalment payments. I am quite prepared to review the legislation with respect to what jurisdiction they may have to review the matter on a regular or periodic basis, and we can discuss it again, Mrs. Campbell.

Vote 1407 agreed to.

**Mr. Vice-Chairman:** This completes the estimates of the Ministry of the Attorney General.

I have one procedural matter to bring to the attention of the committee. We have to consider Bill 1, The Libel and Slander Amendment Act, and it is my understanding there will not be too many representations on this bill. It could be dealt with in one or two days. Would the committee agree to deal with it after we have passed the estimates of the Provincial Secretariat for Justice?

**Mrs. Campbell:** If you will reword that and say "after the committee has dealt with the estimates," I might consent. I am not prepared to say "after we pass them." That could be an event that will not occur.

**Mr. Vice-Chairman:** We will have Bill 1 before us a week Friday.

**Hon. Mr. McMurtry:** Before we adjourn, there are a couple of matters I would like to raise.

First of all, I would like to thank all the committee members for their very interesting and helpful participation, and to say once again how much I have enjoyed the opportunity of sharing many of the challenges facing the administration of justice. I appreciate your interest and help in these matters and look forward to an ongoing dialogue.

There is one additional matter. The other day someone mentioned a matter that I was aware of before, but which I personally hope does not happen, and that is the alleged stated intention of the member for Lakeshore not to run again.

**Mrs. Campbell:** The nomination has taken place, hasn't it?

**Mr. Lawlor:** It's a fait accompli.

**Hon. Mr. McMurtry:** A fait accompli. Well, I regret he has made that decision. In view of the fact that he has, in view of the fact that this could be—not necessarily, but could be—the last estimates of the Attorney General in which he participates, I would like to express on behalf of myself and my colleagues in the ministry how much we have appreciated his participation over the years in matters related to the administration of justice in this province; how much we appreciate his perception, his sensitivity and his wisdom in relation to the many challenging issues that have faced the ministry over the years; and last but not least, of course, the poetry he has brought to these very important deliberations.

I think I can speak for my predecessors and my successors, for whoever may happen to be in my chair—who knows—in saying that I doubt the estimates will ever be quite the same without the contributions of the member for Lakeshore. In any event, we will have opportunities to discuss this in the future.

I would simply like to conclude the estimates, Mr. Chairman, with a brief quotation that is attributed to Lord Halifax but that could equally be attributed to Patrick Lawlor: "The government of the world is a great thing, but a very coarse one, too, compared with the fineness of speculative knowledge."

**Mr. Lawlor:** May I say something, Mr. Chairman, but not, Lord help us, in order to have the last word? I don't go easily, you know. I had to think about it a long time.

These estimates have been a delight throughout, at all times and with succeeding Attorneys General, and it is with regret that I doubt we will ever do this again. Bless you.

**Mrs. Campbell:** It is not fair. You shouldn't have the last word. I would like, simply, to tell Pat Lawlor publicly just how much we will miss him. You have been an inspiration. We are sorry to see you go.

**Mr. Lawlor:** Thank you.

**Mr. Vice-Chairman:** Mr. Minister, on behalf of the committee, I would like to thank you, your deputy minister and your staff for your co-operation and assistance during these deliberations, and for your kindly words about our colleague. Thank you very much.

The committee adjourned at 5:08 p.m.

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No. J-11

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Provincial Secretariat for Justice



**Fourth Session, 31st Parliament**  
Friday, May 16, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, MAY 16, 1980

The committee met at 11:37 a.m. in room 151.

### ESTIMATES, PROVINCIAL SECRETARIAT FOR JUSTICE

**Mr. Chairman:** I recognize a quorum. Today we are considering the estimates of the Provincial Secretariat for Justice. We have six hours in these estimates.

**Hon. Mr. Walker:** Mr. Chairman, I would like to make a statement. It's only a few short months since I was before the committee with the presentation of our previous year's estimates. As you may recall, that was my first appearance before you as the Provincial Secretary for Justice. I am, as you know, also responsible for the Ministry of Correctional Services. Of course, that job entails a much different set of responsibilities and we will embark upon those estimates shortly following the conclusion of these.

First, with respect to the secretariat, we are a policy group. To be quite blunt about it, one of our functions is to identify areas in which our total justice system is not as good as it might be. An example that we have paid particular attention to in the past year is victim justice. Our collective pride in Canadian justice, compared with many other systems in the world, cannot and must not blind us to the realization that the victims of crime have traditionally received pretty shabby treatment.

I know you share my concern on this issue and, therefore, I want to talk about it today—about the victims of sexual assault and rape, about the victims of family violence, about the victims of crime generally. I also want to discuss the victims within the system, such as the developmentally handicapped and people who are jailed on the accusation of petty offences. These are all delicate matters, many of which you raised during last year's estimates. I would like to discuss them openly with you.

Second, we are a research group, but, again, there are inadequacies in the origination and accumulation of much hard data about justice matters. We need reliable and

solid statistics and information to share with the public and others in the justice field so we can collectively deal more effectively with emerging problems.

Regrettably, most other jurisdictions are in the same position; in fact, other jurisdictions are increasingly turning to us for help. I want to talk today about the initiatives we have taken and are taking to improve informational research, making Ontario, we feel, a leader in this area.

11:40 a.m.

Third, the provincial secretariat is a co-ordinating group. We rely on others—ministries, institutions and community groups—to effect desirable change. That, of course, is how it should be. They are, so to speak, the front line people: judges, police, lawyers, community agencies, social workers, volunteers, correctional and probation officers, and so forth. Our job in this respect is to co-ordinate and to encourage a climate of informed co-operation. I would like to say a few words about that.

These three threads—policy development, research and co-ordination—reveal a good part of what the secretariat is about. Now let me try to discuss the substance.

We have been making a special effort to assist those who, in turn, assist the victims of rape. In 1978, the Justice secretariat convened the Consultation on Rape, bringing together experts who could work together in dealing with this extremely disturbing issue. For our part, the secretariat since then has taken several actions.

We have published and distributed two booklets, one entitled *Helping the Victims of Sexual Assault*, and the other entitled *Information for Victims of Sexual Assault*. Both booklets are in aid to those actually helping victims and a training device for personnel in the various fields who at some future time may have a responsibility for assisting the victims of sexual assault. These booklets have filled a basic informational void.

The secretariat has also produced an annotated bibliography on the subject of sexual assault, primarily for the use of professional



people working in this field. By the way, should you want copies of these or any other publications, please just signify and we would be glad to make them available.

Another recent secretariat initiative is the production of a standardized sexual assault evidence kit. The importance of this kit deserves emphasis, for its use by well-trained hospital staff will assist substantially in minimizing what can be a most unpleasant, if not traumatic, experience for many victims of sexual assault. Credit for the quality and practical value of the kit extends beyond the secretariat. We have received significant assistance from the members of the implementation committee, which arose out of the Consultation on Rape, the police forces in various areas and groups such as the Committee Against Rape and Sexual Assault, or, as it is known in Niagara Falls, CARSA.

The standardized kit is a fine example of the role the secretariat should play and can play as a co-ordinator, drawing upon the expertise and sensitivities of many outside groups. I am pleased to tell you that the standardized sexual assault evidence kit will soon be available to all hospitals in the province.

A third aspect of this topic that has been resolved satisfactorily is the extent of government funding of rape crisis centres. We will make a one-time payment of \$35,000 to the Ontario Coalition of Rape Crisis Centres so that this provincial organization can establish itself on a sound footing. We have also reached agreement with the coalition to provide funding of \$450,000 over the next three years, payable at the rate of \$150,000 per annum. These funds will be provided in part by the Ministry of Health, as well as by the criminal justice ministries in the Justice policy field.

These funds will enable the centres to continue to provide a needed service to victims. They will also give the centres three years in which to broaden their base of support in the community with an aim of attaining financial self-sufficiency. This is an important ambition. There are many community services, including aid and comfort to rape victims, that can be provided more effectively and efficiently by community groups than by governments.

One aspect of this community strength is the participation of volunteers who have both the professional skills and, the most valuable asset of all, the human sensitivity to help these victims. We intend to do all we can to maximize the use of volunteers and other community resources in dealing with problems that emerge from the community. With

this in mind, I am pleased to tell you that the Ontario Coalition of Rape Crisis Centres has agreed to explore with the Provincial Secretariat for Justice the extent to which the centres can join forces with other agencies offering related services on a crisis basis.

It is interesting to note that most of the victim assistance services which have mushroomed in the United States started as agencies focusing solely on the crime of rape. Subsequently, they encompassed other forms of sexual assault and, at a later stage, expanded to deal with various forms of violence in the family.

Family violence is an area to which we are giving increasing attention. We don't know whether domestic violence is actually on the increase or whether, in fact, more incidents are being reported to the police. What we do know is that family violence impacts on all parts of the justice system, posing several fundamental questions about how we should or could deal with this issue more effectively.

If, for example, a survey could determine that the rate of actual incidents is rising faster than the rate of reported incidents, we would want to know what factors are deterring victims from notifying police.

Mrs. Campbell: I can tell you that now.

Hon. Mr. Walker: We will invite you to the consultation.

We want to know how much violence generally is considered family oriented. We need to define what we mean by "family" and "family relationships." Conventionally, if a husband abuses his wife, that is considered family violence, but what about an uncle abusing his nephew or niece? We want to know what factors create an environment of domestic assault. This matter is complicated by cultural patterns, historical family relationships and many lifestyle choices.

We want to know more about the rights and responsibilities of the police. When should they intervene in what might be a marital squabble or something much more serious? Indeed, how much of a physical dispute that takes place behind closed family doors should be defined as criminal? We know that many domestic calls answered by the police are return visits, pointing to a long-standing problem. Is this, however, indicative of a justice matter or of social distress?

As you can see, we are becoming more concerned about the general uncertainty that surrounds the issue of family violence and the kind of policy response that is needed. Currently, child abuse is receiving special

attention by the Ministry of Community and Social Services.

The Justice secretariat is addressing the broader issue. We are posing ourselves the question: Under what circumstances should family violence be formally dealt with by the justice system, and under what circumstances should it be handled by agencies and social services? Having answered this question in each case, what is the best mechanism for delivering the services required?

As a substantial starting point, we have commissioned an overview of the current thinking, experience and research related to crisis intervention in domestic violence occurrences. The review is being done by the Com-Sult Group of Ottawa. We have asked this company, which has previous experience in this field, to report what is known about the general extent of the problem in Ontario and the experience of dealing with it here and in other jurisdictions. The consultants will examine the issue of definition, the laws that currently apply, and the options for the most effective response by both the justice system and social services.

I would welcome any suggestions members of this committee may have in helping us to bring the issue into perspective. By the way, the consultants will review many research and project reports. These include the recent study by Dr. Byles, who examined 605 family dispute calls responded to by the Hamilton police.

**Mr. Lawlor:** How much money?

**Mr. Sinclair:** Ten thousand dollars.

11:50 a.m.

**Hon. Mr. Walker:** We are also interested in an extensive project in Vancouver and the results of a project in London that could point the way to one response option.

The London project, with which I am particularly familiar, was initiated in 1972 with training of all police officers on family crisis intervention. A family consultant service was added in 1973 to assist officers by providing round the clock mental health consultation. Initial funding was provided by foundations, followed by project funds from the Solicitors General of Ontario and Canada. Since 1976, the service has continued to operate and is funded solely at the municipal level.

The service has proved to be effective and useful for crisis intervention. It operates from police headquarters from 9 a.m. to 4 a.m. weekdays and from noon to 4 a.m. on weekends.

There are four family consultants who are mobile, in radio communication, and therefore able to respond immediately to calls. In practice, the uniformed officer responds first and decides whether to call in the family consultant, based on whether the family or individual would benefit and is willing to use the service. After the consultant arrives, the officer leaves if no longer needed. The consultant provides whatever counselling is necessary to bring the family or the individual through the crisis period and refers them to a social agency if ongoing help is needed and acceptable.

The 1978 report notes that approximately 15 per cent of all police calls in London were matters related to family consultants. They handled some 1,300 calls with over 1,000 different families. Of these, 34 per cent related to marital disputes involving physical or verbal conflict; 30 per cent concerned problems with juveniles—for example, runaways or behavioural management—and 30 per cent were for other reasons including alcohol, drugs and problems of an emotional, antisocial or suicidal nature.

The family consultant service provided counselling and mediation in 32 per cent of the cases, referrals to agencies in 21 per cent, recontacts with agencies in 28 per cent, and assessments by a hospital emergency department in eight per cent of the cases. There is a very positive response to the service by the police and other community services.

If I might just mention, I talked with Police Chief Walter Johnson this morning. This has been very carefully studied by the University of Western Ontario, social sciences field, and in their most recent report they have indicated that the number of calls being received where family violence and where referrals are required is on the decline in the city of London and it is on the increase in every other centre in Ontario. They think this has a direct bearing on the kind of service that is being rendered by this special branch of the London Police Department.

In fact, I can say to you that, in the city of London, not one gunshot has been fired by a police officer in the last 10 years, with one or two relatively minor exceptions, they being cases where policemen have fired a shot to gain the attention of an intruder in a break-in. In no other case in 10 years has a gun been fired.

I think that is of some significance. There are very definite rules as they relate to the handling of guns in London. It is also fair

to say that London is one of the more significant centres in Ontario when it comes to population, certainly one of the top five—it has a quarter of a million people—and for this large centre which has its own unique problems, being a mid-way point between American centres and some very built-up areas, London's crime rate is considerably lower than might otherwise be expected.

We think much of it has to do with the whole question of domestic violence and the manner in which the London response team operates. It is interesting to note that there is an awful lot of repeat business in the domestic quarrel area. When they are able to identify early the individuals who are in need of domestic assessment, in need of psychiatric assistance, in need of counselling, they find they are able to eliminate the need for a lot of repeat calls that usually tend to increase or aggravate in the degree to which they involve police confrontations. We think the service being offered by London is something that is a model for other parts of the province.

I know the police chief there will be presenting a paper on this very issue before the police governing authorities next week. I commend that paper to all members. I have some knowledge of the paper and what it will have to say.

Turning for a moment, our concern for the victims of sexual assault and the victims of domestic violence are two specific examples of our broader preoccupation with the plight of the victims of crime in general. I first raised this issue in October 1979 at the federal-provincial conference of ministers responsible for justice. There was general agreement that the needs of victims deserved more attention from the justice system.

As I stated then and have repeated since, the criminal justice system makes the offender the centre of attention. The resources of the police, the courts, the legal profession, the correctional system and the law itself all focus upon the offender. By contrast, the rights and needs of the crime victim and his or her family are virtually ignored as if they did not really exist.

As a result of Ontario's thrust at the October meeting of ministers and the interest of other Canadian governments, a major federal-provincial workshop of government officials and the private sector took place in Ottawa last March to explore further the need for services to victims and witnesses.

Earlier this year, I was invited to meet with the judges of Ontario in a series of regional seminars. We discussed how the

existing law could be applied so that the victims of crime received partial, if not full, repayment from the offender for losses suffered.

It is encouraging to note that greater use is already being made of section 663(2) of the Criminal Code, which empowers judges to order restitution or reparation for crime victims. We think our success is spelled out in the figures. Currently, 3,500 offenders are making repayment to their victims as a condition of probation. That is in excess of 10 per cent of our case load and it has all come about in the last year or so.

The term "victim" not only applies to the individual who suffers physical injury, emotional trauma, or economic loss. Victims also include bystanders, witnesses and family members, who experience anger, frustration, inconvenience or economic losses by having to attend court. Often they experience delays in a process they may not understand and sometimes find intimidating.

What, then, are we doing to aid victims? Many worthwhile programs are already in place, but much more needs to be done. Financial compensation is available through insurance, civil litigation, court-ordered restitution and, of course, the Criminal Injuries Compensation Board. There are some homes and hotels for battered wives and, as I have mentioned, we have now undertaken to assist the rape crisis centres financially.

The Ministry of Correctional Services has recently established a number of programs for victims and their families. I will report at greater length on these programs during the estimates next week of Correctional Services.

Justice for the victims of crime was also dealt with in the throne speech in March of this year. As a follow-up to that commitment, the cabinet committee on justice established a working group of senior civil servants in the Justice policy field to identify areas where victims of crime could be accommodated better in our justice system.

The policy field working group may wish to consider the establishment of additional victims' and witnesses' services projects on a pilot project basis. Normally, our test projects involve private sector groups and utilize volunteers who work with the police or the courts, or who provide crisis intervention-type help for victims suffering physical injury, emotional trauma and economic loss. Additionally, such groups deal with the frustration, inconvenience and/or economic losses suffered by witnesses other than the victim, due to delays in court proceedings.



**12 noon**

In addition to the humanitarian thrust of victim-witness service projects, there are a number of secondary benefits that may accrue to the criminal justice system. Some jurisdictions which have established such projects claim that higher reporting rates by victims of crime were achieved and that higher conviction rates in the courts also result from improved witness involvement and attendance.

In some instances the accused himself may be a victim. I refer to a person who is charged with an offence, who is remanded in custody and who subsequently is found not guilty, in which case he has lost, in a sense, several days of his life. Alternatively, he is found guilty but placed on probation, in which case one is left to speculate as to why, if he was not considered a serious enough risk to be incarcerated, he was not allowed bail in the first instance.

The issue of accused people who are remanded in custody is often viewed as being solely a problem for the Ministry of Correctional Services, but that is just not the case. While the impact of remands is most visible in the correctional system, all major segments of the system are affected in one way or another.

For example, the police are responsible for the transportation of remanded prisoners from jail to court and vice versa. The responsibility of the Ministry of Correctional Services in this area is confined to sentenced prisoners. Similarly, the courts have an interest in ensuring that a defendant appears in court at the appointed time for trial. I am sure you are only too well aware of the inordinate amount of time occupied by the court in hearing cases which are remanded, in some cases, many times.

It should be stressed that, once in the custody of the Ministry of Correctional Services, special policies and privileges apply to the status and processing of remand prisoners which normally do not apply to the sentenced inmates. For example, the remanded prisoner wears his own clothing to court, purchases his own newspapers and magazines and has additional visits. As a consequence, the time demands on staff far exceed those made by the sentenced offender.

Moreover, it is worth bearing in mind that all accused people remanded in custody are in maximum security institutions which are very expensive. In my opinion, this is often unnecessary.

In recent weeks I have spoken several times about the critical aspects of jailing

people who are innocent until proven guilty and who stand charged with minor, non-violent offences. None of us would question the need to lock up accused people who have committed serious offences, whose liberty before trial presents a danger to society, or who, at the first opportunity, would take flight, but the fact remains that inordinately large numbers of prisoners in our province's jails are accused people. The question we must address is this: Why are they in jail and what ultimately happens to them when they have had their day in court?

In order to better understand the remand situation two descriptive studies were conducted, one in 1977 and the other a year later. The first study by ARA Consultants Limited, the Stanley study, provides a descriptive account of the remand situation. It identifies problem areas and provides an understanding of their origins which could ultimately lead to a range of possible solutions. I would like to present some of the highlights of this study.

The study reports that the proportion of remand prisoners to the total institutional count tended to be relatively stable from institution to institution. Remands represented from 39 per cent to 57 per cent of the total inmate population. Using specific cases, the total head count on a particular day in the Toronto Jail was 740 inmates—that is just recently—of which 370 had outstanding charges in the courts. The institution in Hamilton had a total of 65 remands out of a total population of 116, and in Ottawa, 76 remands out of a total population of 150.

Results show that the background characteristics of the remand group tend to be consistent over time and from location to location. Typically, remand prisoners are young, unmarried and have grade 10 education or less. The majority was unemployed at the time of incarceration. Half of those who held jobs felt the job would be kept for them, although few felt it would be kept for longer than a month. It is important to note that only one quarter of the remand group faced charges involving crimes against persons. The majority faced charges which were related to property.

The second study was done by the Ministry of Correctional Services in 1978. It points out that of the remand group in Ontario's jails almost 50 per cent were subsequently released on bail, had their case dismissed or received some other noninstitutional disposition.

**Mr. Ziembra:** Fifty per cent what?

**Hon. Mr. Walker:** It points out that of the remand group in Ontario jails almost 50 per cent were subsequently released on bail, had their case dismissed or received some other noninstitutional disposition.

We also conducted a third study recently, which looked at jail admissions rather than individuals. It too confirmed that we have a serious problem. Of all remand admissions, which can include the same accused more than once in the period covered, two thirds to three quarters were eventually released without a jail sentence.

**Mr. Stong:** Excuse me, Mr. Chairman. I spoke to the minister yesterday and I do not know what procedure we are following. Are we allowed to interrupt and ask questions, or would you prefer us to save all our questions till later?

**Mr. Chairman:** I would prefer that the minister have an opportunity to make his statement and then I will give you time for an opening statement as well.

**Mr. Lawlor:** What is that figure again—"of all remand admissions . . .?"

**Hon. Mr. Walker:** This study from 1978 points out that of the remand group in Ontario's jails, half were subsequently released on bail, had their case dismissed or received some other noninstitutional disposition.

**Mr. Lawlor:** Right. Then there was another sentence, about a third study.

**Hon. Mr. Walker:** Yes. We also conducted a third study recently which looked at jail admissions rather than individuals. It too confirmed that we have a serious problem. Of all remand admissions, which can include the same accused more than once, two thirds to three quarters were eventually released without a jail sentence.

I might just deviate for a moment. There seems to be some interest in this area. When we say "which can include the same accused more than once," what we mean is that the same accused person who turned up, say, in March on one matter and was dealt with, turns up again, perhaps in October. It is the same face but a totally different charge.

What all of this means is that many more people accused of minor offences are locked up awaiting a bail hearing, awaiting trial because they cannot raise even nominal sums of bail, or simply awaiting trial for more than two months because of delays in the system. As I have said before, and as I am sure you will all agree, it is an unacceptable situation.

There have been several initiatives made in an attempt to resolve this problem. First, the cabinet committee agreed that an inter-

ministerial committee should be formed among the ministries in the Justice policy field to examine the remand system, with the objectives of reducing the number of persons remanded in custody. This study should involve senior staff from the Ministries of the Attorney General, the Solicitor General, Correctional Services and the secretariat.

Second, the Ministry of Correctional Services has instituted a bail verification program as a means of speeding up the evaluation and placement of nonviolent people accused of minor offences on bail in their own recognition or under the supervision of an approved community agency.

Third, we have increased the number of judges as a measure to reduce the backlog of cases.

12:10 p.m.

Fourth, some measures are in progress to eliminate "judge shopping." These measures are currently under investigation and, if successful, could eliminate a number of the unnecessary remands.

I would now like to turn to another kind of victim within the justice system, people who are developmentally handicapped. While they are a small proportion of our justice population, it should be remembered that these people are not mentally or psychiatrically ill. At worst, they are mentally retarded, better described as developmentally handicapped, and they face special difficulties that make them vulnerable to victimization.

I have had meetings with directors of the Ontario Association for the Mentally Retarded who believe the way in which these people are treated by the system can be improved. As a result of those meetings, the secretariat is convening a consultation on persons with developmental handicaps in the justice system in conjunction with the association. That conference is scheduled for May 29 and 30 of this year.

The consultation will bring participants in the justice system together with specialists in the problems of the developmentally handicapped. They will discuss administrative practices and procedures that can be modified or improved to ensure fair and proper handling of the developmentally handicapped juvenile in the justice system; policing; prevention and the developmentally handicapped; the trial process and sentencing alternatives; and the developmentally handicapped person in the correctional system. An implementation committee will then follow through the improvements suggested by the consultation.

Now I would like to speak on an issue which is rather dry by comparison with the



topics already discussed, but which nevertheless is vital to all ministries and departments across Canada who work in the area of justice. I refer to the field of criminal justice statistics. These are complex and are often confusing and they are not in good shape.

We have decided to take a leadership role in this area. A federal-provincial group was formed under the chairmanship of Ontario's Deputy Provincial Secretary for Justice, who is with me today, Mr. Sinclair, to diagnose the malaise and to make recommendations which would lead to the provision of accurate, timely and comprehensive statistics on criminal justice on a national scale. The report of that committee is in two volumes and represents the first full-scale effort to develop a plan for co-ordinating all criminal justice statistics in Canada. It will be available on June 30 and, if any of you would like a copy, we shall be pleased to send it to you.

As a partial response to the problems which exist in the area of justice information and statistics, the Provincial Secretariat for Justice has also taken the leadership by way of major projects designed to ameliorate the state of justice information and statistics in Ontario. It should be pointed out that while the primary beneficiary is the Ontario justice community, other provincial jurisdictions and the federal government have taken a keen interest in these developments.

To give this committee a flavour of the efforts which the secretariat has pursued in this important area, I would like briefly to describe two of these exemplary projects. The first of these is the Ontario criminal justice terminology project; the second is the publication *Justice Statistics Ontario*.

In mid-November of 1978, the Provincial Secretariat for Justice in Ontario submitted a proposal to the National Work Group, a federal group instituted for the enhancement of criminal justice information, for the development of common terminology to be used in the criminal justice area. The joint participants in this project were the Provincial Secretariat for Justice and the Ministries of the Attorney General, Solicitor General and Correctional Services.

In addition to the direct benefits to the Ontario criminal justice community, the project was conceived as a model for other provinces and one which would also improve the status of national criminal justice statistics. Development of common terminology was viewed as a major step towards the reduction of existing communications problems within and across criminal justice ministries in Canada.

With the assistance of significant funds made available through the National Work Group, Ontario was able to achieve its objective in developing an interim and working draft document of criminal justice terms and definitions in Ontario. Nearly 1,000 were identified and arranged in a key-word-in-context format for cross-referencing purposes. This first phase of the project took approximately three months and culminated in the working draft document on March 31, 1979, which was submitted to the National Work Group and tabled at the federal-provincial steering committee meeting of April 3, 1979.

Phase two of this project, which took place in fiscal 1979-80, was an extension and further refinement of the work which Ontario has accomplished during phase one, December 1978 to March 31, 1979. As in phase one, phase two participants were the Provincial Secretariat for Justice which provided the co-ordination, and the justice-related ministries in Ontario.

At its most fundamental level, the need for this project was based on several key problems, the magnitude of which impedes valid, timely and reliable interpretation of criminal justice terminology. It was clear that within the criminal justice system there are many cases where one word can have many different meanings, or where different words are used to denote the same meaning. This can only lead to confusion and obstruction in the flow and valid interpretation of information.

The ultimate objective of the project was to develop a pilot test, a comprehensive reference document of criminal justice terminology. More specifically, the terminology includes a description of all significant offence categories, criminal justice processes, personnel and agencies.

Although the principal target audience of the reference document is the Ontario justice policy field personnel, other provincial governments as well as the federal government will most certainly benefit from Ontario's efforts, since the end product of the project, as well as the methodology of the documentation, comprises a model for other provinces which they are contemplating in similar efforts.

Quebec and two other provinces have already shown interest in duplicating the Ontario effort and have sought information for the methodology which Ontario has utilized in this project. There is no doubt that if all jurisdictions can agree upon a common terminology, the work of the Justice secre-



ariat will constitute a great step forward towards improving the quality of criminal justice information and analysis.

To turn to the publication, Justice Statistics Ontario, the secretariat in 1977 and 1978 compiled two major statistical reports entitled Justice Statistics Ontario. These reports, which have had very wide distribution both within and outside the government, have pulled together justice statistics relating to such aspects as crime occurrences, clearing rates, charges received and disposed in court, inmate population in Ontario institutions, as well as trends in registrations, complaints and actions taken in the civil justice area.

Because of staffing problems and other demands, the document was not produced in 1979 and the result has been that the secretariat, quite literally, has been receiving hundreds of requests for copies of the publication. To the best of our knowledge, it is the only document which provides a comprehensive compendium of information, bringing together in one publication much material which otherwise is scattered in various sources.

In addition to providing the user with a snapshot of the system, the publication also includes trends over several years which allow the user the advantage of being able to perceive developments. Users of the publication include criminal justice personnel, as well as professors, students and in many instances, the general public.

Based on the overwhelmingly positive response to this publication by way of user questionnaires and telephone requests, the secretariat will again compile a 1980 version. No doubt past use and experience will generate ideas and suggestions which will be incorporated in the 1980 publication.

12:20 p.m.

To ensure maximum input to the planning for this year's statistics book, the secretariat will once again be actively seeking input from the publication's various users. A policy field committee, co-ordinated by the secretariat staff, will once again be formed to provide direction in the content and display of the publication. The committee comprises staff from the Ministries of the Attorney General, Consumer and Commercial Relations, Correctional Services, Solicitor General and Treasury and Economics.

Finally, I would like to say a word about the routine or "bread and butter" work of the secretariat in its role of providing support to the cabinet committee on justice and

to the provincial secretary as chairman. This is an important role and one on which I would like to comment briefly.

The committee usually meets each Thursday morning. We might have several submissions on the agenda originating from the ministries in the field, or a referral from other policy fields or possibly from Management Board of Cabinet. As a subcommittee of cabinet, it is the committee's responsibility to examine each submission in detail and make a recommendation to the full cabinet.

Prior to the meeting, secretariat staff look at each submission and prepare an analysis for my guidance, a copy of which is also provided to committee members. This analysis assists the committee to focus on the principal policy issues involved, the alternative courses of action to be considered and the implications of the proposal. The staff assist me in identifying the main questions and concerns that should be considered by the committee in its deliberations.

It is the committee, however, that must address itself to the issues and to the particular course of action that will be recommended. I can assure you that the policy decisions are not those of the secretariat staff but those of the ministers; nor are they in any sense just a rubber-stamping of staff thinking.

An expansion of this role which is invaluable is the co-ordinating responsibility that the secretariat frequently undertakes when an issue involves several ministries. This co-ordinating role can facilitate action and eventual resolution of the problem. This is particularly useful in the Justice policy field. Current examples are two policy field committees established by the cabinet committee which are convened by a secretariat staff member and which look at matters affecting victims and at the issue of remands.

I wish to thank the committee for the patience and courtesy it has extended me in allowing me to go into some detail on these issues. I shall be pleased to answer any questions you may have about them or about other aspects of the work of the secretariat. It is a pleasure to present the 1980-81 estimates for the Provincial Secretariat for Justice and, as you will quickly note, the amount to be voted is two and a half per cent less this year than our estimate of last year which I presented to you last fall.

Mrs. Campbell: Could I ask a question before my colleague starts? First, I would like to have the reports and compilations to which the minister has referred. Some I have, but I won't go into details. I will just ask

for all of them. Secondly, does the minister have any staff allocated to the committee which the Attorney General (Mr. McMurtry) has set up at our request to study the justice aspects of domestic violence?

**Hon. Mr. Walker:** At the moment we have not considered the matter, since it was just raised in the estimates of the Attorney General. It was just last week, wasn't it?

**Mrs. Campbell:** No. Last week we were discussing the committee, but the problems were raised early on.

**Hon. Mr. Walker:** In his estimates?

**Mrs. Campbell:** In his estimates.

**Hon. Mr. Walker:** That would be a couple of weeks ago then.

**Mrs. Campbell:** Yes.

**Hon. Mr. Walker:** At the moment no action has been taken on it.

**Mrs. Campbell:** By you?

**Hon. Mr. Walker:** No action has been taken by me.

**Mrs. Campbell:** It would seem to me, in the light of your comments, that you might give consideration to it since social workers are on that committee and you might get the whole picture.

**Mr. Chairman:** Mr. Stong, we have about six minutes before we adjourn. Do you want to make your opening statement now or would you rather just ask a couple of questions and leave your opening statement?

**Mr. Stong:** I would rather save my opening statement because I don't want to rush it and it's longer than six minutes. It will probably take about 20 minutes. However, may I just ask a question of the minister? Is his ministry conducting any polls or surveys in relation to any aspect of the administration of justice?

**Hon. Mr. Walker:** That's a difficult question to answer. I can answer it this way: To my knowledge we have commissioned no poll to ask an opinion of the public. However, we have conducted surveys within our constituent elements. I guess I'm getting into the correctional area now, talking about surveys.

**Mr. Stong:** What kind of surveys?

**Hon. Mr. Walker:** We're surveying their statistical information. We're determining how many people have been remanded. We're determining a whole host of things, but this is in the nature of asking computers various questions about admissions, remands and the like. I can't distinguish for the moment between the Ministry of Correctional Services and the Provincial Secretariat for Justice because both are utilizing the results

of these surveys. I will be able to provide those to you.

**Mr. Stong:** These are in-house surveys.

**Hon. Mr. Walker:** These are strictly in-house. There is no survey, to my knowledge, being taken of anyone in the public by the provincial secretariat, and that would also include Correctional Services. There has been none during the time I have been Minister of Correctional Services and none during the time I have been provincial secretary, with the exception—and I would be glad to provide these surveys to you if you feel they are useful—of my constituency questionnaires.

**Mr. Stong:** I would imagine we all have those.

**Hon. Mr. Walker:** I would be prepared to make them available to you. There was very little cost involved in the production of that questionnaire, and we got very accurate results.

**Mr. Stong:** In your role as Justice policy secretary and in so far as that role extends to co-ordinating the other ministries in the Justice policy field, are you aware of any surveys or polls that have been taken?

**Hon. Mr. Walker:** I think CCR has done a fair number of surveys and I believe they have all been published and made public, and I would assume there have been various surveys related to justice done through the Ministries of the Attorney General and Solicitor General, although I am not aware of anything specific at the moment. The only ones I can specifically remember were done by CCR.

**Mr. Stong:** That is the only one you're aware of at this point.

**Hon. Mr. Walker:** The only "ones" I'm aware of. I'm not aware of any others, although I assume there were various questions related to justice asked in other samplings.

**Mr. Stong:** Other samplings?

**Hon. Mr. Walker:** I think there are justice-related questions in the CCR surveys.

**Mr. Stong:** Have you seen them? Have you seen the sample questions?

**Hon. Mr. Walker:** I have seen the ones that have been published.

**Mr. Stong:** We've all seen those. I'm talking about those that haven't been published.

**Mr. Ziembra:** What is CCR?

**Hon. Mr. Walker:** The Ministry of Consumer and Commercial Relations. It's one of the ministries within the Justice field whose estimates we are considering.

**Mr. Stong:** Are you aware of any presently done by any of the ministries that fall within your area of co-ordination?

**Hon. Mr. Walker:** I don't think there are any others within our area of jurisdiction.

**Mr. Stong:** Are you talking about the Justice policy field in general?

**Hon. Mr. Walker:** In general. The only ones I am aware of were done by CCR.

**Mr. Stong:** I have other questions too, but I'm aware of the time, Mr. Chairman.

**Hon. Mr. Walker:** I take it you don't want my constituency questionnaires.

**Mr. Stong:** No, I don't think I need them. I have thousands of pages of my own. Why would I want yours?

**Mr. Chairman:** We do have a problem. Mr. Stong and I, along with some Conservative MPP whose name we do not have, have to speak at a convention at the Ontario Institute for Studies in Education this afternoon, and, therefore, it has been suggested that we adjourn at 12:30. Does that meet with the approval of the committee?

Agreed.

The committee adjourned at 12:29 p.m.



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**From the Provincial Secretariat for Justice:**

Sinclair, D., Deputy Provincial Secretary











No. J-12

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Provincial Secretariat for Justice



**Fourth Session, 31st Parliament**  
Wednesday, May 21, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, MAY 21, 1980

The committee met at 10:17 a.m. in room 151.

### ESTIMATES, PROVINCIAL SECRETARIAT FOR JUSTICE

(continued)

Mr. Vice-Chairman: I will recognize a quorum.

Mr. Stong: Mr. Chairman, in my opening remarks I have the benefit of the research I requested so that we could have something at our disposal to open up the estimates. I also would like to deal in this opening statement with the statistics being compiled and the use to which they are being put. I would like to deal with a situation that has become more and more prevalent; that is, sexual harassment of the female employee in the work place.

I would like to deal with the two latter topics because I think that, particularly with respect to sexual harassment of the female employee in the work place, this ministry definitely could be involved in providing solutions in co-operation with the Ministry of Labour, for instance, and the Attorney General (Mr. McMurtry).

First, I would like to make a few general comments about the role of the Provincial Secretariat for Justice in co-ordinating the various ministries that fall within the Justice policy field. It seems to me that an important aspect of that role is undertaking the gathering and dissemination of information that is germane to these particular ministries. I would like to know to what extent the secretariat is a repository for all the information gathered by these ministries, and to what extent the secretariat serves as a central index for the various studies, policy initiatives, statistics and so forth that are turned out daily by these respective ministries.

I appreciate that the secretariat serves as a vehicle for meetings between ministers and deputy ministers, but it seems to me that for the secretariat to play a proper co-ordinating role it must be able to facilitate the exchange of ideas and information at all levels. I don't think the fact that the same minister wears

two hats serves this particular ministry very well.

I believe there ought to be more time spent in developing this ministry as an overall co-ordinating ministry and that it ought to play a very major role in the Justice policy field, rather than just co-ordinating meetings between three other deputies. This secretariat could be used very beneficially by the government, but I am afraid that it is being overlooked.

In fact, observing your performance in the House, Mr. Minister, I think you are spending more time in reform institutions than you are in this ministry, and your statement seemed to bear that out. I would suggest that this ministry could play a more important, a more vital role in the overall picture of justice.

10:20 a.m.

One project I know you have undertaken is the study of justice statistics in Ontario, and I would like to spend some time discussing the function of these statistics and what I see as the role of the secretariat in relation to them.

First, I would like to quote from the introduction of the last production of this study which was done in 1978: "The present publication is an updated and expanded compilation of justice statistics in Ontario, produced in an attempt to provide in one reference document the most current data on the justice process. The need for information which is timely, accurate and useful has become increasingly critical during recent times of social and economic change."

I for one have to agree fully with that last statement. It seems that only recently we have begun to approach the question of crime, police enforcement, the court system and the correctional institutions with some degree of objective analysis. Too often we have allowed our long-established traditional beliefs to determine our responses to the continual problems we encounter in these fields. Quite frankly, in numerous instances we have let myth rather than fact shape our policies in relation to law enforcement, crime preven-

tion and so on, so we need data that is reliable, current and that is put to proper use.

I am at a loss to understand why the secretariat has decided to compile this data only once every two years after its publications of September 1977 and November 1978. Having shown that it is possible to compile statistics for the province with a time lag of 10 or 11 months, I had hoped we could shorten the delay in receiving these statistics rather than double the waiting period.

I think an important matter to discuss is how these statistics and the crime statistics of the municipal police forces are used. I suggest that it is incumbent upon an institution such as the Justice secretariat, which is actively involved in compiling and disseminating such statistics, to ensure that they are used in a proper manner.

Take, for example, how crime statistics are portrayed to the public. I think each of us, as an individual, is conscious of his or her own personal safety and that of our loved ones, but it is a symptom of our present-day society that our individual sense of security has been declining. It is interesting to note that the public's perception of what their own personal safety is is lower than what might be anticipated, given the present level of crime. This, no doubt, is due to many factors, including the media exploitation of violent crimes and, perhaps more importantly, the experience of our neighbours in the United States.

I am concerned that the manner in which crime statistics are used may unnecessarily accelerate that fear beyond reasonable bounds and cause citizens to clamour for misguided public policy responses. In general, we know that crime statistics are rising, but people do not always distinguish between the number of crimes and the rate of crime per population. I suppose the authorities are partly to blame here, because they may lay more than one charge for each occurrence and these charges are listed as crimes and are kept in catalogue form. Clearly, the increase in the rate of crime will always be lower than the increase in the total number of crimes so long as our population keeps growing.

Secondly, crime statistics depend on reported crime. Changes in reporting techniques and better apprehension methods may cause an increase in the number of reported crimes while crime itself may not be advancing at an alarming rate. The public has to understand these distinctions or else they will be misled, and I think that is a job for your ministry.

Granted, crime probably is increasing, but what does that mean for the individual? While the rate of crime may be rising, does that mean our streets are really becoming unsafe? I understand that of all reported crimes committed in Canada roughly 69 per cent are violent crimes. An increase in the rate of reported crimes may be due to a higher number of liquor offences and speeding tickets rather than to violent crime.

Let us examine the nature of violent crimes more closely for a moment. Fully 75 per cent of all violent crime consists of assaults. Of those assaults, many are between acquaintances; the majority, assaults on wives.

Let us take a look at the most heinous crime of all, murder. From 1961 to 1974, in 69.5 per cent of all murder cases, there had existed a previously established social relationship between the suspect and the victim. Between 1968 and 1974, 37.3 per cent of all murder cases were reported as domestic, and almost 11 out of 12 of these involved members of the immediate family, whether legally married or common-law.

One has to wonder, on the basis of these statistics, whether it is our streets or our homes which are becoming more unsafe. I do not mean to be facetious, but when these aggregate crime rates are reported the public clamours for more police, enlarged police forces, higher jail sentences and even less legal aid for so-called criminals, yet in many instances these crimes are basically social problems. In many instances they do not relate to a half-crazed lunatic walking the street; they are the product of domestic disputes, quarrels between neighbours or business associates, and so on. Nevertheless, a hue and cry goes up for more police protection.

Do people know what they are getting for the taxes that are allocated to police budgets? It seems to me that this secretariat has a responsibility to inform the public. Does the public know that 90 per cent of police budgets go to salaries and wages? If they did, they would probably want to know how that manpower is being deployed.

They would be interested to know that a police officer spends 50 to 80 per cent of his time dealing with noncriminal personal problems. They would want to know why we are using such highly paid help, specially trained police officers, for tasks for which civilians could be hired.

Instead we continue this, in my opinion, incredible cycle, releasing crime statistics which report an increase that may very well be exaggerated. Again the public clamours

for more police, which may well be provided. The police will continue to perform the tasks they have been doing for years, the end result being only a marginal impact on the incidence of crime.

It seems to me it is the duty of this secretariat to co-ordinate the performance of the ministries in the Justice policy field in a manner responsive to the public needs. Inherent in that duty is the requirement that the public understand what is happening in the justice field, why it is happening and how its money is being spent. If these statistics are not readily available, it seems to me, Mr. Minister, that you should bring your good offices to bear on those ministries collecting the statistics to ensure that they do come out in one form or another.

While on the subject of statistics, I would like to mention one statistic that is not being compiled by the Justice secretariat and which, to my mind, should be.

During the estimates of the Attorney General, my colleague, the member for St. George (Mrs. Campbell), spent a considerable amount of time dealing with the issue of battered wives. She pressed the Attorney General regarding the whole ambit of problems which assaulted wives face, from the initial response of police, to the enforcement of family law orders, to the conduct of crown attorneys. She finally convinced the Attorney General to meet with a number of family lawyers to discuss the problems their women clients are facing with the justice system. I attended that meeting and was deeply concerned with the apparent inability of the justice system to deal adequately and responsibly with the problems with which assaulted wives must contend.

10:30 a.m.

As a result of that meeting a committee has been struck, composed of lawyers, social workers and representatives of the Ministries of the Attorney General and the Solicitor General, but what I would like to point out is that there are very few statistics relating to the battered wife syndrome.

The Canadian Advisory Council on the Status of Women estimates that each year one in 10 Canadian women who are married or in a relationship with a live-in lover are battered. Where are the Ontario statistics for how many police calls are in response to domestic disputes and how many assaults are the result of wife battering? It seems to me we need statistics that identify the real social problems and not just aggregates in the abstract which more often mislead than anything else. If most of the major

incidents of assaults and murders involve married and common-law spouses, then we ought to be zeroing in on that particular problem.

That leads me to another issue I would like to deal with in my opening statement; that is, sexual harassment of the female worker in the work place. I am very indebted to a Ms. Cathy Cram, who prepared the brief to which I am going to refer for the Northwestern Ontario Women's Centre and who presented it to the Liberal task force on labour last week in Thunder Bay. Because I was not fully aware of nor did I appreciate completely the problem women are facing in the work place, I want to refer extensively to this brief.

I believe this issue is part and parcel of the statistics, the battered wife syndrome and the social problems to which I have already referred, only this particular problem expresses itself in the work place. Because of the attitude I found within myself when I first heard of this problem, I am going to refer extensively to this brief, as I said, because it is very well done and it reveals a situation that I think we ought to be aware of and react to immediately.

Sexual harassment has been defined as "unsolicited, nonreciprocated male behaviour that asserts a woman's sex role over her function as a worker." Sexual harassment in the office "is not the office romance, an association based on mutual agreement. It is an expression of power, and often used to degrade or embarrass a woman. Although sexually manifested, studies have shown that it is not wholly sexually motivated. Sexual harassment has little to do with physical appearance, age or marital status. It is not related to a woman's 'sexiness' or the man's desire.

"One of the major problems in defining sexual harassment is that the harassment may largely be a matter of personal perception; that is, one woman may perceive a comment about her figure as a compliment, another woman may see the compliment as degrading, with subtle overtones that the boss is interested and expects her to engage in sexual relations. In such a case the distinguishing line between social interaction and sexual harassment is very thin. But there are three key components of sexual harassment that distinguish it from other forms of social interaction in the work place. These components have been outlined by Beth Kendall from the Toronto Women's Bureau."

These studies have been going on for some time and they are now being com-



pleted. Although I am referring to a brief prepared by the Northwestern Ontario Women's Centre, a lot of the conclusions drawn in this brief are the results of studies done in other parts of Ontario. The women's bureau did one of those studies.

The first distinguishing feature of sexual harassment in the work place is that it is nonreciprocal. "Mutual sexual attraction can occur anywhere, including the work place. Women have every right, however, to reject unwanted and uninvited sexual attentions, whether it be from a supervisor or a co-worker." The real problem arises when the unwanted attention comes from the supervisor.

The second component is that it is coercive. It is coercive "if exercised by a supervisor"—someone in a management role—"or co-worker. In the more severe forms of sexual harassment, a woman is expected to engage in sexual relations or suffer negative consequences on the job. The supervisor exercises his coercive power when he demands sexual favours and threatens to fire, demote or transfer her if she does not comply. Male co-workers exercise a subtle, indirect form of power, when through their constant harassment they poison the work environment to such an extent that a woman is forced into quitting."

These are not figments of their imagination. These are actual feelings and these experiences are taking place in the work place.

The third factor is the one of repetition. "There is some disagreement as to whether this component is a necessary part of sexual harassment. One incident alone may indeed prove devastating . . .

"Despite these explanations, the definition of sexual harassment is left unclear. Specifically, what kind of activity constitutes sexual harassment?" Some of the characteristics pointed to include staring, commenting, actual touching, which could constitute a common assault, repeated demands for dates, even demands for intercourse, continual comments or questions about a woman's sexual life, culminating perhaps in rape or attempted rape.

It is pointed out in this brief that there are four prevailing myths that surround the topic of sexual harassment in the work place. In order to understand what some women are going through out there, these myths must be dispelled so that we have a clearer understanding.

The first is that a simple "no" is enough to dissuade the harasser. The brief quotes an-

other study: "... Once a sexual harasser sees that his behaviour makes him feel more powerful, that he won't get into trouble and in fact receives applause from other men for his actions, he is likely to sexually harass again."

You know, I sat listening to this brief almost in disbelief, but in fact these women are serious, they have experienced the situation, and they quote statistics in their brief to support their position.

The second myth is that women who do object to sexual harassment have no sense of humour. Their position is that "a common reaction of men in particular to the issue of sexual harassment is to laugh and treat it as a joke. It is clear they do not understand the problem. To women who have experienced sexual harassment it is no laughing matter. A study conducted . . . in 1976 showed an overwhelming 88 per cent considered sexual harassment a serious problem.

"In a study conducted by Working Women's Institute in 1979, 83 per cent of the respondents believed that the sexual harassment had interfered in their job performance, 24 per cent were fired as a result of sexual harassment, and 42 per cent felt pressured into resigning." They feel there is a sufficient problem for concern.

Nor is the myth that women make false allegations of sexual harassment substantiated. "Women cannot afford to make false accusations. In fact, the existing mechanisms for reporting sexual harassment are so inadequate that it deters a large number of women from laying a complaint.

"Cohen and Backhouse"—who conducted a study in this area—"have found in their studies that a woman laying a charge of sexual harassment faces several obstacles. Although there are a series of recourses open to her, ranging from complaining to the supervisor to laying a charge against a harasser"—that is, under the Criminal Code—"the woman faces ridicule, disbelief and accusations of enticement. Management is likely to use a variety of responses to deter her from 'causing further trouble.' She will more likely be faced with the following questions: 'Is not the real problem the result of a romance gone sour, and she is seeking revenge?' 'Is she not capable of handling the situation herself?' 'Surely, she must have been willing?' 'Did she not entice him in some manner?'" These are the questions posed when a woman complains to her supervisor of sexual harassment.

10:40 a.m.

"Some management flatly refuse to admit sexual harassment occurs on their premises



and will not even listen to a complaint. Eaton's of Canada, Shell Limited and Royal Trust refused to give Cohen and Backhouse interviews. They simply stated that sexual harassment did not occur in their establishments.

"A woman may choose to lay a complaint through her union. Unfortunately, only 25 per cent of women workers in Canada are unionized. The majority of unionized female workers are rank and file members and have little power in the upper-echelon decision-making process. Union activity is focused around wages, vacation pay and overtime."

It is really a justice problem, in my opinion, and this ministry is in a position to conduct research and come up with some kind of solution.

"A woman may also choose to charge the harasser through the courts, either criminal or civil court . . . The harasser may be charged under the Criminal Code of Canada under a variety of sections . . ."

Section 153 of the Canadian Criminal Code deals with sexual intercourse with female employees, but unless intercourse takes place there is no recourse. There is no recourse for assaults, whether they be physical or verbal assaults. There is no recourse under the Criminal Code for anyone who is molested in that manner in the work place. Although there are specific provisions in the Criminal Code to deal with these problems, intercourse must take place before a complainant can have recourse to the Criminal Code.

It might be worthwhile for this ministry to take a position which would encourage the Parliament of Canada to widen the scope of protection in the work place and set up a mechanism that would not be so difficult to employ in the event that a woman does have a complaint about a co-worker or a supervisor arising out of sexual harassment. The difficulties involved in laying a civil suit are severe, not the least of which is the cost.

The fourth myth is that sexual harassment is class related. "One of the prevailing myths surrounding sexual harassment is that it is a phenomenon experienced only by the lower class. The studies have shown, however, that sexual harassment is experienced by women in all occupational levels and is not related to economic status. All women are vulnerable to sexual harassment."

This study reports that the Working Women's Institute study conducted in 1979 found the following: "More often than not the harassers were older men with the power to hire and fire the women. Attempts to stop the harassment were generally useless and

in many cases led to some form of retaliation. Twenty-four per cent of the women were fired as a result of the harassment and 42 per cent were pressured into resigning. In the majority of the cases, the situation diminished the woman's ability to do her job by diverting her attention from her work and undermining her self-confidence. Almost all of the respondents suffered some type of emotional stress and about two thirds had physical reactions.

"Sexual harassment seriously damages the ability of women to earn a living." Unfortunately, very little research has been done in this area; however, certain groups have conducted such research.

"The British Columbia Federation of Labour has recently completed a study on sexual harassment. Ninety-three per cent of the 203 respondents had experienced sexual harassment.

"The recent dismissal of a faculty member of the University of Ottawa for sexually harassing a female student draws attention to the problem of sexual harassment in our universities." It is a real problem. "As a result of this investigation and another dismissal of a York University teacher's assistant accused of rape, the Canadian Association of University Teachers has drafted a guideline on sexual harassment for its 25,000 members.

"A University of Guelph sociology professor, Norma Bowen, will soon be completing a study of sexual harassment at that campus. The Ontario Federation of Students is encouraging all universities to do similar kinds of research and the National Federation of Students is planning a nationwide study for 1980." The findings of these studies could very well be of great benefit to this ministry in pursuing this situation.

At the May conference, Women Against Violence, the problem of sexual harassment was addressed. "One of the resolutions urged that the Northwestern Ontario Women's Centre become a place of complaint and support for victims of sexual harassment"—somewhat like the rape crisis centres you have already set up and that you have agreed to fund.

Indeed, it seems that the most urgent aspect of this problem is a body or a mechanism for complaint, for the registering of complaints, independent of the actual work place itself. The unions are not available for the reasons set out. The Criminal Code is not satisfactory for the reasons set out. It is not satisfactory to take the matter to civil court, and it is not satisfactory to complain to a supervisor. One of the most urgent needs in this area of sexual harassment in the work

place is a vehicle that can be used somewhat similarly to the rape crisis centre. Maybe the rape crisis centres can be expanded and extended to cover this situation. Perhaps they ought to be encouraged by your ministry.

There is a real problem out there. Women are speaking out on this problem. They want solutions. It is incumbent upon this ministry to enter into setting up a vehicle, independent of the work place, that can be resorted to.

Last but not least, this ministry ought to embark upon a program of public education. It seems to me that we have to examine "the sexual bias in our educational system that allows women to be portrayed as passive, docile and incompetent beings." Perhaps this is part of Justice policy that must spill over into education. "Priority should be given to examining and eliminating sex role stereotyping in our schools."

That may be a part of the process of educating in which you could become involved, because of the situations that result from it. "Public discussion should be encouraged"—by this ministry—"through the increased availability of assertiveness training courses and affirmative action programs. In the work place, management and unions should be encouraged to set down policy statements and grievance procedures for handling sexual harassment complaints."

More specifically, this ministry should be involved in protecting a sexual harassment complainant, protecting her job security in the event that she complains, and ensuring her that if she lays a complaint through the proper mechanism it will not lead to dismissal. This kind of protection is recommended in the brief. "A disciplinary agenda, outlining a procedure for handling the guilty party, should be posted by management."

That is a matter for the Provincial Secretariat for Justice as well. "When investigating a charge of sexual harassment, management"—or co-workers—"should utilize the services of an outside consultant"—I would suggest a mechanism that you would set up—"to avoid the possibility of company bias"—this is in the investigation of a complaint.

I believe this ministry can work closely with the unions to "encourage the active participation of female members" in establishing this type of a mechanism. I believe the female members of the work force ought to be consulted in setting up such a mechanism as well.

10:50 a.m.

The problem is real. The problem apparently is becoming more and more urgent.

There are studies already under way. It seems to me that it is incumbent upon this ministry to take a very active role, such as the role you have accepted with regard to rape crisis centres. Now you must turn your attention, in my respectful submission, to women in the work place and the particular problems encountered by them in that area.

My colleague from St. George has just handed me another paper. Perhaps I can defer to my colleague on this. Obviously there are other studies being conducted in this area.

That ends my opening remarks, Mr. Minister, but I do urge upon you this particular matter concerning the work place. I point out the inadequacies of any vehicles now available, whether they be grievance procedures under the Ontario Labour Relations Act or the Criminal Code—any vehicle. They are completely inadequate. Women are intimidated: They are afraid to use these vehicles because they do not feel they have the security and the protection to make a complaint and have a proper investigation made of it. I urge that upon you for the following year.

I might just add an addendum to what I have said. My colleague from St. George has passed me an article that indicates Michigan has already moved on this under its civil rights code. I must say I was ignorant of this. I was just handed it. It may be worth exploring as well, because I believe the Ontario Human Rights Code should be amended to address this particular problem.

**Hon. Mr. Walker:** I believe it is a real problem and I would like to thank the member for York Centre for his comments. I think they are very timely.

There is no doubt that the Justice policy field is deliberating many of these issues; perhaps not to the extent you are arguing, but touching on them from time to time. I appreciate a number of the comments and a number of the recommendations that have been made. I assure you that we will be extracting those recommendations and bringing them to the attention of the policy field for future deliberation.

Some of the recommendations are particularly well founded. Indeed, I think the move we made recently with the rape crisis centres probably reflects a sympathetic feeling in the committee, and in myself particularly, to attempt to resolve some of the problems.

We can all appreciate that the Criminal Code is not a perfect tool for resolving problems of a certain nature. I think of the younger people in society, not just juveniles but people who are fairly young. I am not sure the code is perfect in resolving prob-

lems relating to them. I am certain it is not perfect in resolving matters of rape. Rape really is the ultimate sexual harassment. Certainly your references were to the work place and rapes that may occur in the work place. The Criminal Code takes that word "consent" and puts it into quotation marks and goes into that very questionable area of whether there was consent or whether the woman was forced by an overture from an individual or a superior in the office hierarchy.

The direction in which we have headed by funding the rape crisis centres and, in fact, joining them is an attempt to resolve a problem that just is not perfectly addressed—in fact, it is not even a case of its being not perfectly addressed—but that is inadequately addressed in our codes. I am not sure it ever could be adequately addressed. I am not sure you can provide legislation that resolves that kind of thing without the kind of vehicle which a rape crisis centre provides, a vehicle of support, to a person who needs that support at a time when psychologically she is suffering the worst. Once their mandate has been established and once their experience has been established, I think you will see the rape crisis centres developing into a different organization, involved in more than the relatively narrow but important field in which they are now involved.

It's no secret that the rape crisis centres in the United States ultimately became the source of the victim aid centres like those with which we have been experimenting in Ontario. I am thinking of Peel county where we have a victim aid centre. I think you will see the rape crisis centres ultimately mushroom into the kind of operation that provides true victim assistance for people who just can't apply to the Criminal Code or to crown attorneys or justices of the peace, or get involved in the laying of information because they just don't fit into the framework of that kind of complaint.

I think the inadequacy of the code in these areas is probably reflected in the development on the west coast of the counter-harassment organizations that are geared towards going to an individual who has been responsible for a rape, or who at least has been accused of it, maybe more than once, and, in essence, providing counterharassment. I accept their reason: Their reason is that the criminal laws of today are inadequate to cope with that problem. We think that to some extent we are addressing that problem

through the rape crisis centres, although we know that in itself is not a perfect answer.

I don't accept, of course, the method being used on the west coast. I think it started in California where half a dozen women would go and harass an individual at his work place and embarrass him publicly. I think that goes back to the lynching mob, trial without the necessary proper evidence or due process of law. But we are wise to recognize that this kind of thing is there, and we must attempt to change our laws to meet the needs of society.

The Criminal Code is not a direct responsibility of the province. Last October, however, in my capacity as one of the ministers responsible for justice in Ontario, I went to Ottawa, in the company of the Attorney General, and we had a very good and thorough conference on the whole question of the Criminal Code, sponsored by the Minister of Justice, who was then Senator Flynn. My impression is that the change in government will not likely alter the thrust of what the federal government was proposing at that time; that is to revamp the Criminal Code to address many of these areas.

At that time, I made a very heavy pitch for victim assistance, that in any rewriting or redrafting of the code which of course would involve all of the ministers responsible for justice in Canada, there be heavy emphasis on the victim of crime. This is an area where that victim of crime can be defined very convincingly.

Some of the statistics you produced are the kind of thing that would be very helpful, particularly the brief presented by Ms. Cram. If we could get a copy of that, I would appreciate it. My thanks to the labour task force of the Liberal Party. If you would be good enough to share your statistics with the rest of us, it would be helpful.

11 a.m.

I think you will see a revamping of the Criminal Code of Canada. We in Ontario will probably take a lead role in helping to bring that about and in ensuring that it addresses a number of difficult matters. One of them, obviously, is the kind of sexual harassment you have described, but we hope to cover an even wider area than that, the whole area of victimization and victim assistance. We hope that will become a significant underlying basis in the Criminal Code; more justice, in essence, for the victim. That's what I think our thrust is today, and that certainly was our thrust at the meeting of the ministers back in October of last year.



You made some reference to the statistical information the Provincial Secretariat for Justice brings together. I can assure you we will accept your advice and publish a 1980 edition of Justice Statistics Ontario, which I hope will be available shortly after the new year.

We do collect the information and collate the statistics for all the ministries as they relate to occurrences and resolutions. Each ministry, however, fancies itself a repository for its own statistics and usually produces a statistical compilation at the end of each year; usually in its annual report. I know we in the Ministry of Correctional Services do and I know the Ministry of the Attorney General does. That information then, in essence, becomes our information and at the same time it becomes the world's information. The material is gathered together.

The only difference from what you are proposing or suggesting is that the material is gathered by each individual ministry—it probably would have to be anyway—and is then fed into the secretariat. Each ministry then is the repository for its own statistical information. We provide the book Justice Statistics Ontario which you have in front of you, and which, for the benefit of the record, is about a half inch thick, very detailed and furnished on every page with graphs and statistical analyses of criminal behaviour in this province.

There is one thing in reporting that presents a problem for us. For instance, you talked about battered wives, but the uniform crime reporting system doesn't break down the causes into individual headings. Of course, we ourselves are not able to break it down. I think you will see more of that happening as we become more sophisticated in our statistical compilations.

One of the great moves in recent times has been the compilation of the data dictionary project, which is dated March 31, 1979, but which really just got final approval from across Canada. It started out last year, and Mr. Crispino, who is here at the far end of the table, has done nothing but that for the last—how long has it been, Len, a year?

**Mr. Crispino:** It has been a year, working with other people from the four ministries.

**Hon. Mr. Walker:** Mr. Crispino of the Justice secretariat has been putting together the common lexicon. This is the first time anyone in Canada has done this. We couldn't compare information from one province to that from another because what they said for one word was totally different from our interpretation. We now have the Ontario

Criminal Justice Terminology for Statistical Data and Information Systems. It is a one-inch thick lexicon that on each page defines important terms in the justice field. That's the first step. It is just hot off the press, dated 1980, and it will now become, I am sure, the basic ingredient for every other province's approach to statistical information and common terminology.

I will pass a volume of it over to you, Mr. Stong, and if other members would like copies—I don't know if I have any here—we will see that they are made available. That was the first step, getting a common terminology so that we all speak the same language.

Now we can start going over to computerization. In our computer process, we will be able to provide, ultimately, breakdowns that otherwise would totally escape us; breakdowns that will give us, particularly, comparisons from province to province, and eventually, we hope, with other jurisdictions. When the book was prepared, it was prepared with a view to including other jurisdictions in the world as well. We think that is a smart move that will result in a great deal of information in the next year or two.

The progress in this field has almost gone in exponential leaps and bounds in the last two or three years. Ontario was basically the first province to make real moves, and it is working very well; in fact, at this very moment, Mr. Sinclair from the Justice secretariat is the head of the federal committee on this whole question of statistical compilation. Consequently, we have an obvious in, so to speak, on the ground floor of the preparation of statistics. We have reason to believe it is moving very quickly, and at some time you might want to have Mr. Sinclair give you an update on it. That would be useful.

Starting in January of next year there will be a quarterly update of Justice Statistics Ontario. I think you will find that of use also.

We talked about the Criminal Code and its inadequacy in addressing the problem of sexual harassment. Your reference was to section 153, where it states that sexual intercourse is the only ground in the Criminal Code for laying a sexual harassment charge. Of course, I think various assault charges are also available to an individual, should something other than sexual intercourse occur.

I thought you addressed very well the problem of the fine line that exists in the whole issue of sexual harassment, the fine line between sexual harassment and social interaction. I dare say that line is so fine that it

changes from day to day; what may be social interaction for a few weeks at some point may change to sexual harassment. It may merely reflect the number of occurrences, or it may reflect a change in favour. That has to be kept in mind. It is going to be very difficult to define what that line is, and I do not envy a court attempting to resolve that problem.

Of course, the other remedy available is the Ontario Human Rights Commission. Dr. Crittenden, who is the chairman of the commission, has indicated—I believe publicly now—that the number of incidents of sexual harassment has simply mushroomed over the last few years. What we do not know is whether or not there is an increase in sexual harassment or, in fact, an increase in reporting it. We are not really sure of that in rape cases. We tend to think there is an increase in reporting, not necessarily—although we can't prove it either way—an increase in the incidence of rape. There are some very important questions to address there, and I am not sure we will resolve them except with many years of experience.

As I said, I thank the member for York Centre for his comments. They are timely and useful, and we will try to respond to them in a meaningful way over the ensuing months..

11:10 a.m.

**Mr. Vice-Chairman:** Thank you, Mr. Minister.

**Mr. Lawlor,** do you have an opening statement?

**Mr. Lawlor:** Yes, I have. Thank you, Mr. Chairman. I am substituting for the member for Riverdale (Mr. Renwick) who is on some kind of diversion program, a temporary absence. He is serving his sentence intermittently.

There are quite a number of matters we should get into. Before we do, we might pause for a moment of comic relief. This just came across my desk yesterday, an educational publication which contains a few jokes.

Jimmy Durante said, "If I'd known I was going to live this long, I wouldda taken better care of myself."

Sam Goldwyn said: "I want you guys to tell me candidly what's wrong with our operation, even if it means losing your job." "You can never lead unless you lift." "Too many people don't care what happens as long as it doesn't happen to them." Finally: "Brains are like hearts; they go where they are appreciated."

I think there is more educational wisdom in that than in the rest of the publication.

There are many matters we could discuss. The first matter I will be launching into is your remarks about victims of crime. The second matter is this major matter of the Stanley report and the Madden report. I suspect—and it is regrettable, in a way—we are going to take up a good deal of time with that, because there are other pressing matters and the time allowed for these estimates is extremely short. The third area I would like to mention is the federal Juvenile Delinquents Act and its ramifications.

Then we can, if we have time, talk about mind development groups and the work of your secretariat in that area; about drugs; about condominiums, which were discussed in the previous estimates; and about your relationship with the Royal Canadian Mounted Police, a federal thing, and a little bit of an incursion into the McDonald commission and your role there. The Attorney General touched on it, but it has broader implications over and above his ministry's responsibilities.

On the first point, you have made great play—and one has to be very tentative about all this—with victims of crime. I am sure that, as Camus said, "None of us wants either to be victim or executioner." What I think—and it takes some temerity to say this to you because the angels are ostensibly on your side on the issue—is that you had damned well better be concerned with your own victims for the time being. That's where you can be efficacious.

The constant insistence by the minister on the victims of crime seems to me to be a concern which is not really outside the jurisdiction of his secretariat, but—Victimization is worthy of mention of course, but you gave very little credence to the role of the Criminal Injuries Compensation Board. You kind of sloughed over it in passing.

Mrs. Campbell will remember how difficult it was years ago to bring that body into being. It took two or three years of hammering, the complaint being that it would be inundated and the costs would be astronomical. Nothing of the kind has happened. We were doing the estimates of the Ministry of the Attorney General last week, and we did not even mention that board particularly, because it seems to be functioning quite well.

**Mrs. Campbell:** We ran out of time, actually.

**Mr. Lawlor:** We just didn't have time. I read the report and, with all the deficiencies, et cetera, I think it is a commendable move forward and a very considerable alleviation

of the problem in this particular area. But I am deeply concerned about the victims of your own system. Your emphasis tends to divert, to excuse, if you will, to ignore, to dismiss or to escape from a dwelling upon the victims that you create.

If the vandalism and the crime rate are as great as you claim then it is largely an indictment of ourselves, all of us. We create the conditions and we do little to remove them except to express some self pity and a lot of banalities. There is a tendency among those in office, including myself, to identify ourselves with the "good guys," to assume a false safety and to bloat into a complacency which is a betrayal by the so-called "good guys," those who tend to respect position, authority and prestige, or who, in any event, stay out of trouble. At least we don't see their troubles in society. One never quite knows what goes on in the closet.

We grind the victims whom we create in the gears of this system. There is a covert Phariseeism here which, far from acting against the evil, contributes to it and may be a primal cause of it. All the nice people in this world who condone—no, who connive at—the infliction of suffering, know secretly that its fruit is bitterness and yet desire little else.

Injustices arises when someone asks, "Why am I being hurt?" Punishment is at best the infliction of harm in order to arouse or stimulate the sleeping good in the victim. I would have the minister remember these things. It is a question, I come to believe more and more, of an alteration in attitude, in the way we approach these things, and, at a second level, which is far more important, where attitudes and feelings are vague, of lifting it to the level of intentions of spelling out for yourself what are the goals. In this particular regard, you raise the issue of prisons wholly from an economic point of view; people languishing in prison, using up the substance of the province, et cetera. You seem to make very little penetration into the conditions and into what you are trying to achieve by their being there at all.

I would recommend that your ministry do something very strange instead of all these studies, which are statistics compiled by a technocracy—everything done from the outside, like science, by people who give themselves airs because they think it's quasi-scientific. You can do anything with these figures. Instead of these statistical studies, you should appoint someone in your ministry to sit down and summarize, condense, for you the great literature on prisons and imprisonment.

I would recommend you consider starting with Dostoevski's *House of the Dead*. What is the condition of a prisoner? How does he feel? Do you enter into this? If you do not, you are not going to do a damn thing to solve the problem. You have to identify with the victim, not castigate him. In our system, it is all superficial and you are working from the outside. I would also mention Solzhenitsyn in this context, although I think Solzhenitsyn is much too much of an engineer to enter profoundly into these matters.

11:20 a.m.

There are thousands of books now, particularly books on concentration camps and the condition of prisoners in these camps, how people responded to them, what alleviated the conditions, what kept them whole, or what helped, even in those conditions to make them whole and to enable them to become full human beings for the first time in their lives. Bruno Bettelheim, a leading child psychologist in the modern world, was himself a prisoner in one of those camps, I think Dachau, and he also has described his experiences in depth.

There are dozens of writings of this kind. These people were victims and criminals as far as the state was concerned. It had passed laws which placed them in precisely that position. Much can be learned from these sources. We read the books and then we forget about them. We do not apply the lessons learned. Why the hell do you think they were writing, if not to change both attitudes and intentions?

Give someone six months and let him work over these books. I am sure he could come out with a series, even in point form, of nostrums for you that would vastly improve the thinking around here and vastly improve the conditions in the system.

At the heart of the thing, mostly, is an icy loneliness. How do you break that terrible state that is in all of us? You break it through communication. I have said it before and I will say it again today: One of the prime things is that most people living in these conditions feel themselves condemned and have a profound sense of inferiority. Victimization also takes the form of putting themselves down. They feel like weasels or skunks or some kind of ravenous animal, and they feel they have to act in that way. They really do not know that others feel precisely the same way.

If that could be made clear to people, that anything any one of us undergoes, any kind of anguish, any kind of suffering, is felt equally by thousands of others—perhaps



it is the whole human condition. But not to be aware of that! How do you do that? You do it by letting people talk to one another. That is why I am so strongly in favour of group therapy within the institution. I know you have it, but I do not think you stress it. For the first time in their lives, they hear someone else telling them of precisely the same thing they feel resonating in themselves.

There is a basic impetus and desire for goodness in all human beings. It may be larded over with all kinds of iniquities, but there it is.

So much for the sermon. I want to turn now to the second thing. It is an intricate thing to get into, but I will try to find the best way to approach it.

Your two documents and the statements that have been made to the press are predicated upon a false premise; namely, "Take a look at all the people who are in our jails for short terms," and, "Take a look at the number of people who are released on bail, or on probation, or for any other reason." You say to yourselves, apparently, "What on earth were they ever there for in the first place, if they are going to be released at the end of the day or acquitted?" As far as I can see, you are saying they ought never to have been there. Surely that is simplistic in the extreme.

The fact that a short sentence is served is no indication of the seriousness of the crime. Up to a point it is. It is probably minor, whatever that means. We will come to that, your definition of "minor." My God. What I classify most of the time as quite serious—and you do too in your off moments and when you are speaking to other groups on different subjects—is impaired ability. That is a horrendous crime, but you do not list it as such. The whole thing comes down to certain monumental crimes and a whole host of others is left out.

I would remind you that people spending time in jail might have spent a great deal longer time in jail if the time they had already spent awaiting trial and sentence was not taken into account. Not only is it taken into account, but, as I understand our judges, they consider that time hard time. They give a little bit more to the time spent prior to sentencing than they would to time actually served under sentence.

You say there are so many people in there for 30 days or 45 days, but it seems to me you do little or nothing to determine the reason for the offence or the results of serving that time. Then again, there are all kinds of side effects of serving time, particularly in the jails you have. It is highly curative.

They never want to go back there again, particularly to the Don jail. There are side effects in this regard. For you to wring your hands before the press and elsewhere on that particular score is not fair, in the sense that you do not take into account the range and diversity of circumstances.

A second ground on which people are placed in jail prior to any determination is the need for a psychiatric report. That takes time. I would like to know what the ministry proposes to do. An individual is suspected to be mentally ill and unable to answer for the crime in a regular trial, but that has to be determined, so the Clarke Institute of Psychiatry or the Queen Street Mental Health Centre or another body is asked to make the determination. The Minister of Health (Mr. Timbrell) has so loaded these various institutions and has closed so many that they cannot attend to these matters. Maybe you should tweak him in the corridor some afternoon and tell him that this is a factor in the overcrowding of jails in the province.

Let's talk about bail for a few minutes. That seems to be the nub of the problem. There are two nubs, but bail is certainly a critical one.

Sometimes the accused is released on his own recognizance, but sometimes, of course, he needs someone to stand surety for him or he will stay in detention. It's all outlined in the Criminal Code. But I would remind you, all you good people, that when, a few years ago, reverse onus provisions were inserted into the code it was all these people who were throwing up their hands. They brought such pressure to bear on the federal government that it reversed that onus. It has become more condign, more demanding than it was. It is like the second condition of the man being worse than the first, after he has suffered some kind of medicine. That was a fallacious move and it accounts for a good deal of what you are complaining about.

I don't doubt, Mr. Minister, that you were one of those who, when you didn't have the responsibilities you presently have, said that it was too easy, too soft, and that they were all walking out of the jails and back into criminal lives. You cannot have it both ways. I am saying to you that the situation should be alleviated with respect to bail. It should be up to the crown to prove its case in a show-cause hearing, not the other way around.

Not only that. It is my understanding that the instruction to the crown attorneys of this province is to be tough and to resist. The

experience of criminal lawyers I have spoken to is that the crown has tightened up on the thing and objects more and more often to bail. If they can find any grounds to oppose it, they do. That runs directly counter to the things you are saying, and you should have a talk with the Attorney General. I did not discuss it with him. I was waiting for you.

11:30 a.m.

We know the grounds for bail. I will give you credit on one count; that is, that bail supervision thing operating in some of the major cities, which you are going to expand. That would be even better if expanded. They walk in where people need sureties and sometimes supply them personally, for heaven's sake. We need an expansion of bail facilities. We need more people who will stand behind bailees.

If a person has no fixed address, no family ties, or if he has quite a record or is appearing in front of a judge a second time for having committed a crime while out on bail—there are 100 reasons why bail might be refused. There are a couple of them outlined in the Criminal Code. They are supposed to be the only ones, but the crown invents them, for heaven's sake.

That's another thing: Your statistics are totally inadequate and tend, therefore, to falsify your reports and your statements to the public. This won't change until you can break down the statistics to show the *raison d'être*, the grounds on which bail is refused, some of which are quite justifiable in many instances.

I concede that there are cases, many cases, too damned many cases, where bail is refused when it ought to be granted or when the surety is set too high and the accused reposes in jail for five or six days, maybe longer, until some kindly soul comes in and bails him out.

I don't know the statistics on the number of people who break bail. I don't think there are very many. I think it is so minimal as to not require enormous surveillance. Therefore, if such is the case, if the overwhelming number of prisoners, once they have the bail, return, the grounds for bail should be expanded.

I'm sure it's not the \$500 that was put up to get them out that keeps them around and causes them to return for trial. Does anyone believe that? It's because they would return for trial in any event, because they think they can beat the rap or because they have particularly legitimate defences. There are 100 reasons again.

I don't think it would require an enormous amount of statistical work to break this figure down. You have those people working every day down at the old city hall and the courts, and surely from day to day they can keep some breakdown of the categories involved in these various cases.

Another imputed fault is that lawyers adjourn these cases and force their clients into prison or jail. I don't believe that, basically. I don't believe it for two reasons.

Lawyers, most of them, have consciences. There are a few who don't—yes, I have to concede that. I know one or two cases where the lawyer is so overloaded with cases that he would prefer to skip up to the Supreme Court to try a criminal case because the fees are higher, rather than attend to the case in the provincial courts. That, again, is extremely rare. I don't impute to my fellow lawyers that particular kind of perniciousness; many other things, yes, but not that.

Even if that were so, the second reason is that a prisoner has a good deal to say about the matter. He is in jail and he is the one who can make the determination. If he doesn't like the bloody lawyer, if he thinks he is playing games, then he can get rid of him.

There are—and your statistics show the figure is one per cent or something like that—prisoners who want to delay their trials for any number of reasons, so that witnesses might die and what not, but nothing can be done about that. The business of adjournment is between a lawyer and his client. You discuss it with him and you say: "I simply can't appear on this occasion. Maybe it would be better for you to get somebody else."

There is also a small number of cases where a man is so addicted to a particular lawyer—he thinks he is some kind of saviour—that he would adhere to him through thick and thin. I don't think that's very common either. Most people, particularly young people, and they make up the bulk of the people in our jails, don't know Adam from Eve on that score and one lawyer will serve pretty much as well as another.

There is a bit of shopping for judges, but surely that doesn't happen in most areas of this province. There are only one or two judges you could possibly go before in most counties. There is usually one, maybe a couple at the most, and they know you and you know them. The lawyer knows what is possible and what isn't possible, and the judges come to know who the games-players are and I am sure, in consultation with one another, move in on him.

Shopping for judges does occur, up to a point in the major urban centres where things can get lost in the shuffle. You may get a judge on first appearance who, for idiosyncrasies of various kinds, you would rather not have. Again, a consultation with the client would indicate it was necessary to put it over.

But any other solution, to attack frontally the adjournment concept for terms of preparation and everything else would be a worse evil, I put it to you, than what we have at present. Since it's pernicious in only a few instances, it's a matter that can't rate, even in terms of statistics, all that high.

The minister has dealt with people who were released without a sentence. You're a lawyer; you know. How on earth do you know in advance? The case has to be tried and the facts of the situation weighed. Perhaps something could be directed to the crown attorneys to spend a little more time perusing the cases and weighing the thing. They don't look at the cases normally, as far as I can see, until the morning of the trial. You walk into their offices and they begin to leaf through their briefs and point out every defect they can find. You are arguing the opposite way as to what disposition could possibly be made of this case. Maybe one is crying to heaven.

The judges in the higher courts, particularly in the appeal courts, spend a lot of time in their chambers prior to hearing the case, and know the case pretty thoroughly before they ever step into the courtroom. Is that too much to demand of crown attorneys of this province? Probably with 40 or 50 cases a day, it is. I don't quite know the solution, but you are in the position of the mighty and can survey and peruse these matters. One never knows whether probation is in good order until such time, very often, as one gets a pre-sentence report.

Pre-sentence reports are another hangup, again a perfectly legitimate one, which explains a great many of the cases you cry out about; but they are necessary. It takes two or three weeks, sometimes longer, to produce one. In the meantime, the individual is sitting in jail. Speed that up. If you need more personnel in social services and surveillance of people in custody, then it certainly has to be the answer. It's one of those curious answers where you pay for yourself, so to speak. For the \$50 a day that it costs you can pay for a fair slice of the pre-sentence report and get it rather more quickly.

11:40 a.m.

You need deeper studies. You need more analytical insights into the provision of bail. You have to work with the Attorney General of the province to speed up trials. He dealt with that aspect of the matter, but refused to confront you even when we tried to force him into that position. He will be gratified to learn that.

He has appointed more judges and some more courtrooms are opening, but certainly, along with bail, one of the chief causes of trial delays is the inability of the courts, particularly the lower courts, to keep pace with the laying of the charges. That stems, in part, from the perhaps too aggressive activity of the police in laying charges to start with, and in laying multiple charges. The business of laying everything you can find in the book against an individual retards the whole system. They say it is generated by plea bargaining, because the police know that nine of the 10 are going to get knocked out by bargaining. Mr. McMurtry doesn't like the term "bargaining"; "discussions" is his euphemistic word for it.

Finally, the reports that have been submitted to you, I put it to you—and I suspect we will come back to them because I want to go into a somewhat deeper analysis of some of these reports—are superficially analytical. They start with the wrong premise and end up, inevitably, with a distortion and with no indication written into them of what on earth you are supposed to do to fulfil your function as a minister, or what, when all these factors are brought into a single focus, you can do about it.

I won't take more time on them just at the moment, but as we proceed with these estimates, I shall come back to and question in a specific way some of the statements made in the Madden and the other study.

With regard to the Juvenile Delinquents Act—I trust we have time to get to it—you were good enough last year to produce major substantive suggestions for the proposed new legislation, set out in point form as to what proposals were being made. It included such things as the age categories for juvenile offenders; your problems with the pre-disposition report; the business of counsel being independent of parents in case of conflict; the in-camera aspects of the hearings and how that should be done; and the tension in your thinking, and I suppose in that of all of us, between a special mode of treatment for a juvenile offender and granting him his full rights under our jurisprudence, et cetera, the right to be represented, to cross-examine, to



testify on his own behalf and all these various things.

I would like to know at this stage what the status of this matter is. There is a brief statement in the estimate briefing material you were good enough to let us have, on page 16, which gives us some background with respect to it, but an update at this particular point would be valuable. I think that's enough to say at this time. Thank you.

**Hon. Mr. Walker:** In response, Mr. Chairman, in reference to the victims of crime and the Criminal Injuries Compensation Board, Mr. Lawlor used the word "Phariseism". I have tried to look it up in the lexicon prepared by Mr. Crispino, and in 1,012 pages with 19 entries per page. I have not been able to find that word in the standard lexicon of information. I have been puzzling about it ever since and missed what you had to say.

**Mr. Lawlor:** I am a great reader of the Gospels and Christ spoke of the Pharisees, those whom He would vomit out of His mouth. They were the ones who pretended to be good, who felt good and who had enormous amounts of self assurance and self satisfaction about every bloody thing under the sun, how well they were doing and all this kind of nonsense. They were the ones He put His finger on.

**Hon. Mr. Walker:** In Mr. Crispino's search for words that would be appropriate for the lexicon, for the dictionary, he appears to have overlooked the justice references in the Bible. We will obviously have to pick up on these and make sure they are all included.

On the question of remands, which took up a fair amount of your initial remarks—and I thank you for those—I think it might be best if I described the setting in which my comments were made. In a discussion with a newspaper reporter about the Barrie Jail and some chap who had been in the Barrie Jail for well over a year and who was acquitted on a charge of murder, I mentioned that we had some concerns about the whole questions of remands. Our concern was that there seemed to be a disproportionately large number of remand prisoners in our jail system which was causing us real problems.

**Mr. Lawlor:** I am sorry, disproportionate to what? To other jurisdictions?

**Hon. Mr. Walker:** Disproportionately large in terms of its relationship with other jurisdictions—and I will touch on that in just a moment—and disproportionately large in comparison with the sentenced population.

**Mr. Lawlor:** And disproportionate with respect to the situation 10 years ago?

**Hon. Mr. Walker:** Yes, I will touch on that in a moment.

The statistics I then rolled out gave us a great deal of concern. Our concern was the very obvious concern that people are innocent until proven guilty, the old British principle of justice that I think is right and proper. If it is at all possible, people should not serve their sentences prior to trial but after trial, after a finding of guilt.

I recognize what some of the crown attorneys might say about "hard time" and that some judges may take that into account in their sentencing. Indeed, I am sure they do take that into account in their sentencing. But I think the basic tenet of that principle of justice in our British system is that a person is innocent until proved guilty. The only reason a person should stay in jail awaiting trial is—well, in fact, there are two reasons: A person should stay there if he is not likely to return to the trial, if it is a risk to release him on his own; secondly, he should stay there if he is a threat to society. Failing that I would think that once those two requirements have been satisfied in the view of the presiding justice, a person should properly be released on bail. I appreciate your comments about bail and the onuses that have been applied.

11:50 a.m.

I gave some statistics at that time that concerned me. I have been able to produce more recent statistics. As I mentioned earlier this morning to Mr. Stong, our body of knowledge in this field has grown significantly over the last few years. We initially talked about the studies you mentioned earlier, the Stanley and the Madden studies, which pre-date even the figures I am about to give you now.

There was a study done by our ministry—there was a computer printout out, in fact—a copy of which I provided to Mr. Nixon of the Liberal Party and Mr. Renwick of the New Democratic Party. The statistics produced showed that for an 18-month period ending June 30, 1979—they're barely six months old; well, more than that now, but they're not too out of date—there were 39,733 people remanded. Of the 39,733, 27,369 or close to three quarters were not sentenced to a term of incarceration when their trial occurred.

**Mr. Lawlor:** I don't think that proves a damned thing.

**Hon. Mr. Walker:** Please let me finish and then offer your conclusion. Of the 27,369 who were not sentenced to a period of incarceration following their trial, two thirds of them served on remand for a period of time less than seven days but one third served more than seven days. That means that 9,000 of those people in that 18-month period served a period of time prior to their trial in excess of seven days.

Let me refine that a little more. First of all, the figures of 39,700 people I gave you served a total of 634,301 days. Work that out at \$50 a day and I think you will see that not only is the question of innocent-until-proved-guilty a consideration, but the question of the cost to the public of that accommodation is also worthy of note.

Let us just take a look at the 39,000 people.

**Mr. Lawlor:** You can't lump it like that. You make it look astronomical. Analyse these things.

**Hon. Mr. Walker:** It is astronomical and I am trying to give you the analysis now. Of the 39,700 people who were remanded during that 18-month period, 10 per cent served less than seven days and 16 per cent served 16 to 30 days.

**Mr. Stong:** Are you talking about their sentences now? You said "serving."

**Hon. Mr. Walker:** No, pre-sentence, on remand.

**Mr. Stong:** I misunderstood your use of the word "serve."

**Hon. Mr. Walker:** In essence, when we look at all the remands, a third of them served over three months on remand, eight per cent served from four months to a year and half of one per cent served in excess of a year. Half of one per cent doesn't sound like very much, but when you apply it to nearly 40 000 remanded people it works out to something in excess of 200 people who are serving longer than a year prior to their trials. As a matter of fact, at this very minute in the jail at Windsor, which is meant to be a short-stay facility, a place where people remain until their trial occurs, there are four people who have been on remand for over a year; three people who have actually been there longer than a year; and a fourth person who has just been advised of the date for his trial, and when the trial occurs he will have served longer than a year.

I think that raises a question. It's something we have to address. I think you would think less of me if I didn't bring out these

statistics and say there is a problem here. In fact, Mr. Stong said earlier that I have a duty to educate the public, a responsibility to bring things to the public's attention. Here I am bringing attention to it. I am bringing to this committee's attention the fact that this is a concern we have.

We don't know all the reasons, but we think we know most of the reasons. We don't know what proportion of the reasons apply to a person's being there, but we do know a few things.

Here is one other figure: 66 per cent of the remands are eventually released on bail within eight weeks and, as a corollary, do not receive a jail sentence. I think our argument is this: If a person is eligible for bail at day 21 or day 49 or day 302, why wasn't he eligible for bail at day one or day two or day three or even day seven? We like to think that period of time could be less than it is today.

We know that all kinds of these people had jobs. More than half the remands had jobs the day before they were admitted to jail. Almost all of them say their jobs will not exist after a month, so we can say that people are losing an awful lot of jobs in this process. If they are in there for a period of time for which they do not necessarily need to be in there, for whatever reason, I think we, as public officials, all of us in this room, have reason to raise a flag and say, "There is a problem here and something should be done."

Just let me mention that, in terms of jurisdictional relationships, Ontario's remand rate is two times that of England and the United States. On any one day, Ontario has 25 per cent of its inmate population on remand. The Canadian average is 15 per cent and the Alberta average is 18 per cent. Alberta is the next worse province to Ontario and it has 18 per cent. The Canadian average is 15 per cent. Yet Ontario is at 25 per cent, and that gives us some concern.

Between 1957 and 1967, the smallest percentage of remanded prisoners held in custody was nine per cent and the largest percentage was just about 13 per cent. For the period of time 1968 to 1978, the smallest percentage of remands held in custody was 16 per cent and the largest 34 per cent, a dramatic increase. In fact, in the last two years the number of remands, compared to the jail population, the sentenced population, has gone from roughly 25 per cent—23 per cent, 26 per cent—during the 1970, to 50 per cent during the last couple of years. It shot up. Half the people in the jails and detention centres are there on remand.

I think I have a responsibility to draw this to your attention. It's a concern I expressed in this very committee last year as Minister of Correctional Services. On April 4, 1979, I appeared before this same justice committee for the estimates of the Ministry of Correctional Services. On that day I said that of the 1,300 people on remand, more than 48 per cent were eventually released within seven days and about 70 per cent of all remands were eventually released without being further incarcerated.

## 12 noon

In other words, when you sort out the statistics, there are approximately 900 inmates on any given day in maximum security institutions who are ultimately released. They are serving a period of time but they are ultimately released. The fact is that some of these people need not be there. If that is the case, it has significant benefits from a public cost point of view and, even more significant, from a public policy point of view, which is that justice demands people be brought to trial as quickly as possible and justice demands that people be considered innocent until proved guilty, our basic tenet.

You ask, "What are we doing to attempt to resolve the problem?" We are trying to identify the causes, and I have given some of the causes. As a matter of fact, the newspaper chose to print the one that caused the most interest; that was, that some lawyers use plays in some cases or shop for judges. That happened to be the one highlighted. That's fine. I guess that's their right. But at the time I gave a number of other reasons to the newspaper reporter and I said that, of course, some are acquitted.

You may not know about an individual who has been properly jailed. When I say "properly," I mean that all those individuals are in jail properly. By due process of law, they have been put into jail on remand. I am not for a moment suggesting they are there improperly or illegally. They are certainly there under proper law.

The next question is whether they are there with totally good reason. That is where the question of "needlessly" comes in. I indicated that some people were acquitted and, of course, that's right. You never know when a person is put into jail or put on remand if he will be acquitted. He may be the worst character in the world who would not return to trial if they put him out on the streets. Therefore, he is properly there; not only is he properly there, he is legitimately and logically there. Then he ends up being acquitted at the time of trial. It is

unfortunate, but that is the way his history has dictated he should be treated.

I indicated too that some people—Mr. Lawlor, you mentioned this—are given credit for time already served. I think it is fair for judges to take that into account. I don't know what the percentage is but I am sure it doesn't represent all 27,000.

I indicated that some people get probation. I indicated that there are suspended sentences. I indicated that there are problems with lawyers. Some lawyers are busy, some lawyers shop for judges, and some accused shop for judges and sometimes they shop for lawyers in this way. Some of the accused are responsible for keeping themselves there, for whatever reasons. Some prefer to spend their time in a local jail, such as the Barrie Jail. They know they are going to be found guilty and would prefer to stay there, rather than be shipped off to Kingston and be away from some of their friends. Those are some of the intervening factors.

I am not entirely alone in some of the comments I have made. Some people who are far wiser than I have made some comments. Let me give some references. Talking about busy lawyers, let me quote Judge Fanjoy, who is a county judge in Brantford: "Some criminal lawyers are booked ahead for six months or more," said Judge Fanjoy, "and their work load must cause some delay in getting cases on." He went on to say: "And, of course, there is the element of human nature. Some lawyers abuse legal aid. When they are paid by the hour, time isn't important."

Mr. Lawlor asked me this question in the House one day and I indicated that I didn't think legal aid was as much of a problem as it may have been in the past, especially with the block billings that are now occurring which, basically, have eliminated that incentive, if it ever was an incentive.

Chief Justice Howland said: "There has been an acute problem. Lawyers have been suddenly announcing that they cannot appear for a scheduled trial because they have a commitment in a higher court." That's merely an indication of lawyers who are busy.

Mrs. Campbell: Probably good lawyers.

Hon. Mr. Walker: Probably good ones. Undoubtedly good ones. The busiest ones are probably the best ones. I think I heard that 80 per cent of the cases in Toronto are dealt with by something like 40 lawyers. If that is correct, you can see how this community, where probably half the criminal



cases develop, can find its lawyers run ragged.

**Mr. Lawlor:** Are you sure of that figure?

**Hon. Mr. Walker:** I merely said I heard it.

**Mr. Stong:** It's probably true because they are tremendously good lawyers.

**Mr. Lawlor:** Yes, I know, but 80 per cent of the cases by 40 lawyers? Come on.

**Mr. Stong:** There are a lot of guilty pleas reached in negotiation.

**Mr. Lawlor:** That would mean those lawyers spend every day in the courtroom.

**Hon. Mr. Walker:** Chief Justice Howland, in an article written in a Toronto newspaper back in 1979, was reported to have laid down some new rules. When he laid down these rules, he threatened "contempt charges for lawyers who don't have good excuses for postponement or who fail to give enough notice for such a request for postponement. It is not unusual for a lawyer to have two or more cases set on the same morning in different courtrooms at the old city hall, but there are a few who have abused this informal buddy system. They do things such as booking more cases than they can physically handle or taking cases set for the same time in different courthouses."

On the matter of shopping for judges, Judge Harold Rice is the associate chief judge of the criminal court in Ontario and he has conducted a very good experiment of marrying the crown attorneys, the accused and the judges through the period of adjournment and remand. Judge Rice proved it is feasible to get a trial on in 90 days. That has been the experience and that seems to be sufficient time for the vast majority of cases to be dealt with. In other words, they are saying cases do not need to go longer than three months, yet our statistics show that one third of our people are on remand for over three months. Something is awry here. That's why I mention it.

In 1973, the report of the Ontario Law Reform Commission said, "Every accused charged with an offence should normally be brought to trial within 90 days of arrest, regardless of the court to which he is committed for trial."

Robert McGee, the York deputy crown attorney, has said, "Career criminals traditionally try to stave off trials." He would like to seem them go to court within a three-month time limit. "Some career criminals went through the project court," he said, referring to Judge Rice's project. "Maybe we did them a favour in a perverse way. They

didn't have time to get out on the street and get caught again and get brought up on three or four more charges."

With regard to shopping for judges, both Judge Rice and Mr. Geller, whom I don't know, said in this article that "a fixed team of judge and prosecutor reduced the judge and crown shopping. Some defence lawyers will adjourn a case until the normal rotation system gets them a prosecutor with whom they feel they can negotiate a relatively light sentence in return for a guilty plea. They also wait for a judge known as a 'soft hitter' in sentencing." This was reported in the *Globe and Mail* in November 1978. This problem is undoubtedly there.

Talking about witnesses and delays, Chief Justice Evans was talking about "defence counsel invariably bringing motions in weekly court to seek to quash a committal. Evans said: 'You are ready to go to trial, witnesses are coming to the courthouse, but you can't proceed with the trial because there is a motion to quash pending. The guy loses in weekly court and he appeals to the Court of Appeal. Then you miss another session of the trial court and the trial has to be postponed again. I know of cases like this where there has been no merit in this type of procedure, but it's aimed at delay in hope that a key witness will die or disappear.'". That's someone as eminent as a chief justice.

Interjection.

**Hon. Mr. Walker:** I am just quoting straws in the wind that tend to back up some of my comments.

**Mr. Lawlor:** Who are we mere mortals to question Mr. Justice Evans?

12:10 p.m.

**Hon. Mr. Walker:** On the issue of busy lawyers, here is an article from January 1979: "Judge Assails Lawyer for Delays in Trial." This occurred in a Barrie courthouse. The judge was quite annoyed at the long delay because the defence counsel was due to appear in Vancouver court on January 29, the day the Ontario trial was due to begin. "Judge Osler said yesterday that he was not prepared to accept this as an excuse, but he agreed to the two-week adjournment."

A certain amount of delay does go on. Chief Justice Evans issued new rules earlier this year. When he spoke at the opening of the courts on January 8, he complained about this very problem. He made the following criticism of defence counsel: that they were using the preliminary hearing process permitting the accused person to use them as a mouthpiece; refusing to disclose their defence

at pre-trial conferences; making excessive use of discretionary procedures, motions to quash committals and delaying tactics; and he complained that they were milking open-ended legal aid plans. As I said, I don't know if that is such an issue.

**Mr. Lawlor:** He recommended that costs be assessed against them in the instances where they offend, and I think it would be a good idea.

**Hon. Mr. Walker:** Two reports recently advised us to bring remands on quickly. In the report of the Royal Commission on the Toronto Jail and Custodial Services, Judge Shapiro's report in 1978, recommendation eight was "that remand inmates be brought to trial with greater dispatch." He was only looking at the Don Jail and some problems there.

Arthur Maloney, in the report of the Ombudsman in 1976, talking about adult correctional institutions and remanded inmates, said: "Remand inmates in most cases live with daily anxiety. They wonder about the possibility of raising bail, about when their trial will be held, about whether their families are weathering life safely without them, about the loss of their jobs, about their day in court and about the possibility they will be found guilty and sent to a long-term institution."

"Yet, to a great extent, the remand inmate's life behind bars while he awaits the disposition of the charges against him is very similar to that of an already convicted inmate. Without having gone through the formality of a trial, he is treated as if he were guilty and had been sentenced. Certainly it has been our experience during the past years that about the only difference between a remand and a sentenced inmate is the remand inmate's weekly appearance in court. We feel that steps should be taken immediately to attempt to reduce the large number of remand inmates in Ontario's jails and detention centres."

What are we doing then, having set the stage and having identified the problem? I think we were responsible in identifying the problem in a public way and in getting some attention focused on redressing the problem. What are we doing ourselves? I will tell you right now there are many more things we have to do, but crowns, lawyers and court administrators have to do as well.

I think our most famous action is the bail supervision project I announced to this very committee a year ago. It has been under way now since last September. I want this committee to see bail supervision at work.

I know Mrs. Campbell has, and perhaps Mr. Lawlor has, but I would like the whole committee to see the bail supervision project under way.

It started last September as a pilot project in the old Toronto city hall under the direction of Dr. Ruth Morris, who is a Quaker. The committee is run by three private agencies gathered together, the three being the Salvation Army, the John Howard Society and the Elizabeth Fry Society. They have banded together to operate it on a contract basis for the Ministry of Correctional Services.

What they are trying to do is to reduce the length of time it takes for an individual to be released, on the assumption that the individual is going to be released anyway. If he is going to be released nine days down the line, they try to get him released three days into his remand. In fact, they try to get him released on the very day he appears for the first time. Usually, having been arrested the night before, he turns up in court in the morning and sometimes he is back to work by five o'clock that afternoon or by noon that day. That's important. That means he is likely to keep his job.

The bail verifiers work for Dr. Morris. People who work on the team go into the cells of the police lockups early in the morning. At three or four o'clock in the morning they go in and start talking to these people, and start getting the facts that are important to a justice when he makes the decision on whether the individual should be released on bail.

**Mr. Lawlor:** I hope you won't mind my interrupting once in a while.

**Hon. Mr. Walker:** No, go ahead.

**Mr. Lawlor:** They receive on occasion some obstruction in trying to get into the cells, don't they?

**Hon. Mr. Walker:** That has largely been resolved. I think there was an initial reluctance, but we have had a fair resolution of the matter. We had problems at the old city hall because physically that labyrinth is an impossible place to get into to see people. I walked in to see the holding tanks there. Nobody could be interviewed in that place in a proper way.

The police co-operated with us. Chief Ackroyd was particularly helpful at the time, along with then Chief Adamson, and we moved our people back a step. We moved them back to three or four o'clock in the morning to accommodate the police problem which is room in the lockups, at the Don jail, at 52 division, 16 division, 11 division

in your area. You tell me they don't have any people locked up out there.

We are able to go in and talk to these people, find out if they have a job, find out if they have a place to live, find out if they have an aunt to sort of give them an address if they don't have an address. If a justice sees a person with no fixed address, it's game over for that chap from a bail point of view.

They find out this information and then they turn it over to the bail verifier at 8 a.m. The bail verifier immediately starts phoning, and by the time the court convenes the bail verifier is ready to appear in court. He is not there to say, "I recommend bail"; that's not his job. He goes there as an *amicus curiae*. The justices now recognize them, having seen them a number of times.

They get up and give some details. They say: "The man indicated to me that he has a job and, yes, I have been able to verify that. He works at the Acme Tool and Die Company. He has been a regular there for nine years now," That judge is going to say, "Okay, that's good." No one else would have checked this out. Indeed, the accused himself would be unlikely to have counsel by that time, though he might have duty counsel, and he might not have been able to get that message across to the judge sufficiently to allow him to let the person out.

Some interesting things have been found. One chap spent 49 days in the Metropolitan Toronto West Detention Centre. His bail had been set at \$250. We are paying \$50 a day to keep every inmate who is in the Metro West detention centre. Indeed, I would suggest it is probably higher than that because it has 24-hour-a-day maximum security, the highest security in the world, in essence, because we hold there murderers, rapists and international thieves. They are all kept in that kind of 24-hour-a-day maximum security institution. This person had been remanded, his bail had been set at \$250, and he spent 49 days before we got to him and realized that he could be helped. Bail was found for him. Some relative was prepared to put it up. That person ultimately turned up for trial. That's just one case.

Another chap was down in the Don jail two weeks ago, charged with fraudulent accommodation. His bail was set at \$10 and yet he spent nine days waiting for trial.

**Mr. Lawlor:** That was fraudulent.

**Hon. Mr. Walker:** He could not raise the \$10 bail. When he was ultimately taken to trial, was convicted and sentenced to two more days in jail—for fraudulent accommoda-

tion. I think we can all picture the kind of individual who might have been involved and the kind of accommodation he might have had. He probably didn't have more than a night's accommodation there, probably said, "I'll pay for it in the morning," and didn't, and spent 11 days in the most secure facility Ontario has, the Toronto Jail, which is overcrowded. Was justice done there? I raise that question. I think we have to look at some of these questions and address them.

12:20 p.m.

Bail supervision is one thing. We now have it in a number of communities across Ontario and it is spreading. It is now in, I think, nine communities, not bad for an experiment that began last September.

**Mrs. Campbell:** Could I ask you at this point what the police attitude is in other parts of the province? Also, have you resolved the case which was given to you during a discussion about the lockup at city hall, the case of the police officer who took the position that he was in charge and that was game over? You had the name given to you. It was a local lockup in Toronto. Has that been resolved?

**Hon. Mr. Walker:** Let me put it this way: In 95 to 98 per cent of the cases, everything is working smoothly. We have difficulties in some areas depending on the personalities involved. That was a personality problem. The individual was one who happened to be in charge that week or that month.

The problem has been resolved, as I understand it. That's not to say we won't have a flareup. We will have. We will have flareups from time to time in the system. With nine communities now involved, there are problems, personality problems. We had some difficulties in London, which I thought was ironic.

**Mrs. Campbell:** I can't believe that.

**Hon. Mr. Walker:** This was one of the rare times anything untoward has ever happened in that city. A number of us had to sit back and take stock and wonder if we were representing it properly.

The situation involved the kinds of questions being asked by the bail verifier. The questions went a bit too far. They encroached on the lawyers' domain and we had to make peace with the lawyers; rightly so. They were right. When I was told of this, we stopped everything and started over again. The matter is resolved.

We have had individual flareups that we have had to correct, but I am happy to say that if you were giving marks out in a high



school examination for this kind of experiment you would give the kind of marks a person could take home with delight, marks in the high 90s. It is working, working well. It is reducing the time. It is causing a reverse onus to develop. Since the crown attorneys realize someone is going in with all the facts, they are taking a little more thorough look at each case. We find that it has had a salutary effect and we are happy with what is progressing.

**Mr. Stong:** Mr. Chairman, I don't want to break the minister's stride and I don't know at what point he digressed from responding to Mr. Lawlor, but I do want to get back to the statistics he quoted and ask some questions. I don't know if this would be the appropriate time or not.

**Hon. Mr. Walker:** Any time you want. Let me just finish the four or five things remaining. I will just touch on them briefly.

The Attorney General has indicated that more judges and more courtrooms have been added. Most of the problems, frankly, are in the Toronto community.

**Mrs. Campbell:** No. Windsor is bad and Hamilton is bad.

**Hon. Mr. Walker:** Yes, but most of the problems occur in Toronto because of its size. You have how many judges? There are something like 25 criminal courtrooms and there are probably more judges than courtrooms. There are different faces, different crown attorneys and different accused, and the anonymity creates problems and permits activities like judge shopping. That couldn't be done in Kingston or some of the smaller county towns. With more judges and more courtrooms in the Toronto area, with the opening of College Park just a few months ago and the addition of judges, it is working.

The interministerial committee, which I mentioned in my opening remarks to this set of estimates, is under way and functioning, and I am satisfied that it is addressing the problem. I am not satisfied yet that it is providing solutions, but first of all we must try to determine the scope of the problem.

The Provincial Offences Act is undoubtedly going to reduce the number of people serving sentences prior to their trials. We have allowed things like telephones in our jails. A number of our jails now have telephones available.

**Mrs. Campbell:** Which you tap.

**Hon. Mr. Walker:** Well, we would only tap if we were so directed by a judge. We would never do it on our own.

**Mrs. Campbell:** Oh, of course not.

**Hon. Mr. Walker:** The telephones are now available to inmates. We have a very simple system of putting telephone jacks in our institutions and they are now in Ottawa, in Whitby and in Metro West detention centre. That program is going to invade the entire province. All 52 institutions will have phones before long. The idea is that an inmate can harass his lawyer.

**Mrs. Campbell:** What a reason for a telephone.

**Hon. Mr. Walker:** It means that the inmate can contact his lawyer more directly. He contacts us and we set up a telephone interview. We make the call, so there are no frivolous calls. One of the correctional officers would phone the lawyer and say, "Inmate So-and-so wishes to speak to Mr. Whomever."

Similarly, it can work in reverse. Lawyers do not now have to drive out to Metro West from downtown, which is a useful thing; it must take half an hour each way, if not more. It you have a client in the Whitby Jail or the Barrie Jail, eventually you will be able to telephone there. Right now at the Whitby Jail you can phone and talk to an inmate. It can be set up. It may take a while to get it set up if the inmate is in a remote area of the jail; nevertheless, it is working.

Computer scheduling of the courts by the Ministry of the Attorney General is producing good results and reducing backlogs.

Those are some of the things we have done. We have many more to do, let me not kid you on that. We, all of us, have a lot of responsibility to correct some of the abuses of the system, and that we are doing. I give full marks to the Attorney General and Solicitor General and to the Ministry of Correctional Services for co-operating. That is how an interministerial committee can function best, to my mind, as a co-ordinating operation. Those are my comments in response to Mr. Lawlor.

**Mr. Stong:** I just want to revert to your remand statistics and the causes. As I understood your reasons, you said you don't know why they are there or for what reasons they are being held.

**Hon. Mr. Walker:** I offered about six or seven reasons. I think there are more. I happened to offer six or seven in that interview, but I think there are more.

**Mr. Stong:** All right. Just so I premise my questions accurately, you said that last year there were 39,733 people remanded.

**Hon. Mr. Walker:** Yes.

**Mr. Stong:** Two thirds spent less than seven days awaiting trial, and one third spent more than seven days.

**Hon. Mr. Walker:** No. Of the 39,733, two thirds were remanded for under three months and one third was remanded for over three months.

**Mr. Stong:** What about the seven days you referred to?

**Hon. Mr. Walker:** Now you are talking about the 27,369 who were not sentenced to incarceration.

**Mr. Stong:** I see.

**Hon. Mr. Walker:** Of those, two thirds served less than seven days; one third served more than seven days.

**Mr. Stong:** In remand.

**Hon. Mr. Walker:** In remand.

**Mr. Stong:** Of the 27,000, which is about two thirds of 39,000—

**Hon. Mr. Walker:** Almost three quarters.

**Mr. Stong:** All right. For the sake of argument, I will accept your figure of three quarters. Three quarters of the 39,000 figure, or two thirds of that figure, 27,000 in rough terms, spent less than seven days. You have given a lot of what I will refer to as lawyer-related reasons for remands. You included busy lawyers, lawyers abusing legal aid—

**Hon. Mr. Walker:** I didn't say that.

**Mr. Stong:** No, you referred to people whom you quoted.

**Hon. Mr. Walker:** Yes.

**Mr. Stong:** These remand statistics, I take it, are not broken down or categorized into remands prior to trial and remands prior to sentence, are they? If they are, can you give me those figures?

**Hon. Mr. Walker:** They are not broken down.

12:30 p.m.

**Mr. Stong:** They're not. That's rather important. I take it as well that a remand is a remand whether a person is waiting for a bail hearing or whether he is just being held overnight. That's a remand, right? So long as he is incarcerated, he is in remand. This becomes very significant. These figures are not lawyer-related at all. I'm convinced of that.

**Mr. Lawlor:** May I interrupt for a moment? There are figures here, and I have seen them, which don't dwell on that distinction but which speak of being convicted and awaiting sentence in different categories.

**Mr. Stong:** That's right, and I want to explore this just a little more deeply. There is

no categorization of remands as to sentence and conviction. That's one thing the statistics fail to tell us.

Secondly, I take it there is no categorization designation how many people have spent one day waiting for a bail hearing and how many have been put over for three days pending a bail hearing at the request of the crown, because the crown is not ready. That's not documented either, is it?

That is rather significant. I am going to tell you something, Mr. Minister. You have two thirds of 27,000 people spending less than seven days in jail. We realize that when a person is incarcerated under the Criminal Code he must be brought back before the court within eight days. That's mandatory. When it's less than seven days that indicates to me one of three things: that person is waiting for a bail hearing, which is not his fault or his lawyer's fault; or he has been put over for trial, perhaps by a judge who, having presided at the bail hearing, has said: "This guy's guilty. Let's get this thing on faster and we can encourage him to enter plea negotiations"; or it could be that some of those people have been incarcerated pending sentence because the judge does not want a jail sentence to appear on their record, and it won't if they are incarcerated pending sentence for a short period like five days. I know judges who will give a short incarceration period of one week so that the sentence does not appear on a young offender's record. He can go to jail five or seven times because of a series of break-and-enters, yet they will not appear on his record.

Yet, Mr. Minister, you are saying, or you have been reported as saying, that lawyers are the cause of this. That's nonsense. Two thirds of 27,000 people is a far cry from lawyers being responsible.

I want to caution the minister when he talks about lawyers abusing the system. I am convinced our system of justice could not work without the defence counsel. The bastion of freedom in this country is the defence counsel. He carries the weight of the courts and the administration of justice on his back. Thank God there are 40 busy ones in Toronto. Thank God there are 40 busy ones and they're good and that people depend on them, because that guarantees the freedom of the individual and protects the administration of justice. If we opt for such things as eliminating judge shopping and if we take steps to fight plea bargaining the administration of justice will grind to a halt.

Plea bargaining, first of all, is based on the judgement of an experienced criminal counsel

who is aware of the factors that must be proven in any charge. Presumably he has the truth from his client and information at his disposal from the crown attorney, when the crown attorney is prepared to give it to him and make full disclosure. I must say, by and large the crown attorneys in this particular jurisdiction are very co-operative; they will give the information.

He has to make a decision as to whether he is going to have a trial or not. If the trial would be a protracted trial involving much court time and inconvenience to witnesses coming from a long distance, many times he will want to speak to the crown attorney about entering a plea to a reduced charge, even though the more serious charge could be proved. That's a fact to take into account. There is nothing wrong with that because it provides free court time for someone else.

If the crown attorney is prepared to accept a plea to a lesser charge, and when the ends of justice would be met in sentencing, then what is wrong with plea bargaining? If we interfere with defence counsel following that route to free up the courts for the trials of individuals who want their cases tried, then we are not serving justice so well.

It seems to me the reasons you have set out do not apply, and the press has given you a lot of publicity for your statements. I hesitate to bring this forward because I rather enjoy the conflict between you and the Attorney General on this issue.

**Hon. Mr. Walker:** I didn't know there was a conflict.

**Mr. Stong:** He's out there trying to woo the defence counsel and the lawyers, and here you are standing up making statements that are contrary to what he is trying to do. I rather enjoy that conflict; however, that conflict does not serve the ends of justice and I don't believe that statements such as "lawyers are the cause of people being incarcerated" reflects at all the true picture.

The true picture is somewhere in this statistic you have given me, but it has to be broken down. Two thirds are in for less than seven days, which means they are incarcerated, beyond the control of the lawyer, between conviction and sentence; or they are incarcerated awaiting a bail hearing because the crown has asked that the matter be put over for three days so he can compile his information, which is also beyond the control of the lawyer; or they have just been arrested and are waiting for a weekend to pass before their first appearance in court on a Monday. How many of those two thirds of 27,000 fall

within those three categories? If we knew that, we might be able to say it's the lawyer's fault. But we need the true picture. I don't believe we have the true picture at all.

**Hon. Mr. Walker:** I am glad you have risen to the defence of defence counsel. I can't disagree at all with what you are saying. I think, in some of the reported comments the defence bar got a bit of a bum rap.

**Mr. Stong:** You'd better believe it.

**Mrs. Campbell:** It sure did.

**Hon. Mr. Walker:** I indicated that to you, I indicated it publicly, and I indicated that I gave a number of reasons when asked. Remember the context. The context involved one case and the question was, "Are you concerned about remands?" I said, "Yes, we are concerned about remands," and I gave some figures.

**Mr. Stong:** I accept your explanation of that.

**Hon. Mr. Walker:** Then I gave a number of reasons. The reporter asked me, "Why are there so many remands that give you concern?" I gave as best I could off the cuff, not having prepared myself in advance, the best reasons I could give at that time, some five or six reasons. One of them happened to involve lawyers. That's the one that got taken out of the context of the discussion. I guess it is the right of newspapers to do that, and they did it. If it's not their right, at least it's their practice on occasion.

**Mr. Stong:** Mr. Minister, I think you learned a hard lesson. I accept your explanation. I know the attitude of the press. I notice the press isn't even here today to cover these proceedings and our questions to you on this.

**Hon. Mr. Walker:** They didn't know you were speaking this morning.

**Mr. Stong:** I'm not worried about that. I think when you make statements that the press might blow out of proportion—and they're wont to do that; I accept that—and when you are relying on statistics, you should make sure you have the proper categories. You obviously don't have them and they are very, very relevant.

**Hon. Mr. Walker:** Remember, I am simply raising the issue and saying we have a problem; we think there is a problem here. I think you would say, given the figures, that there is a problem.

**Mr. Stong:** I don't agree there's a problem when a judge puts somebody in sentence for five days. That's not a problem. That falls within that two thirds of 27,000.



**Hon. Mr. Walker:** I'm not saying that. What I'm saying is that with the bald figures we have, a red flag of concern should be raised. When 27,000 people spend periods of time in jail, when a third of them are there for longer than seven days and do not receive a sentence of incarceration following their trials, you then have to ask if there isn't a *prima facie* case being made for a problem. It has been identified.

12:40 p.m.

Now we are trying to find out where the fault lies. Some members of the defence bar have suggested the fault lies with the crown attorneys, and I suppose there are occasions when that happens. Some of the crowns have said the problem lies with the defence bar. Some of the judges have said it lies with the defence bar and some members of the defence bar have said it lies with the judges. At the moment everybody is standing in a circle pointing guns at each other and saying, "It is your fault."

I am not interested so much in where the blame, if it is blame, lies. What I am really interested in doing is trying to resolve the situation we have now so that two things happen. First, a person who is on remand should spend no more time on remand than is really necessary. If three days is the legitimate time, fine but if he spends a day longer than three days I think that is a concern I must address, not only as Provincial Secretary for Justice but as Minister of Correctional Services as well.

**Mr. Stong:** Mr. Minister, I am not as convinced as you are that the problem is of such great proportions. I believe that if you had these things properly categorized you would be able to eliminate almost two thirds of that total number as a reason for delay. You would be able to say that, through the proper administration and due process of law, they are in custody waiting for bail, or their hearings were adjourned at the request of the crown to prepare for bail, or they were waiting for a weekend to pass for a first appearance or waiting for sentence. Two thirds serve less than seven days. That's what that indicates.

**Mr. Lawlor:** I am going to join you at this stage. It is not good enough for the minister to say he has a problem and then set up all kinds of bogeymen and various things. He has a responsibility too and his responsibility is precisely the one you are talking about. You have to know what the hell you are talking about. Only then can you find the cause. You are going to have to point your finger.

There are some elements of blame, obviously. You can't say you aren't interested in assessing blame. You will have to do it whether you like it or not. Where is the fault in the thing? If you really believe all these remands—I think you have a bit of a case. But you are not able to do so now, and I think it is your responsibility to categorize these things properly so that we will be able to get to the root of this thing.

**Mr. Stong:** Right. You see, I am not so sure it is a question of fault or fault finding. I am not convinced that this is the issue here. If there is a fault, maybe it's lack of facilities, maybe it's too much crime on the streets. Who knows? At any rate, I don't think you can say it is the judge's fault, I don't think you can say it's the crown's fault and you can't say it's the defence bar's fault.

The defence bar has been taking this thing on the chin since the issue was raised and since legal aid was introduced. First of all, they are accused of abusing the system. That's hogwash. There are so few lawyers abusing the legal aid system that I think it augurs very badly for anybody who mouths that type of an accusation.

**Hon. Mr. Walker:** I agree with that comment.

**Mr. Stong:** Also, as Mr. Lawlor indicated in his opening address, maybe some of these people who have been waiting three months for a trial are there because they are waiting for a witness. They may be waiting for a lawyer. We guarantee an accused person the right to counsel and to the counsel of his choice.

**Hon. Mr. Walker:** I don't think anyone is waiting for a lawyer for three months.

**Mr. Stong:** There are some people who are prepared to do that, believe it or not.

**Hon. Mr. Walker:** I don't know of a judge who would permit that. If there is, I would want to know about it.

**Mr. Stong:** Then we are going to have to revise one of the basic premises in our law, that a person has the right to the lawyer of his choice.

Are we going to allow judges to say to accused persons: "Look, you have been coming before me for 21 days now"—or 30 days or 60 days. "You change your lawyer because I want this trial on"? If that accused person has confidence in a lawyer who is involved in a murder trial that is taking six weeks, are we going to change our law to say: "No, you can't have the lawyer of your choice. I don't want you in jail because it is costing the province too much money"? Perhaps the

accused believes he can get off on the charge. He thinks, "I am willing to risk staying in here for another week to 10 days or a month to have the lawyer of my choice at my trial." All right, there is a balancing of propositions there, I suppose, that we are going to have to go through.

**Hon. Mr. Walker:** If one third of our remand spends a period of time on remand longer than three months, if one third of the 39,733 people spends longer than three months waiting for trial—

**Mrs. Campbell:** If they are waiting for trial.

**Mr. Stong:** That's right. What else would they be waiting for?

**Mrs. Campbell:** Sentence.

**Mr. Stong:** We wouldn't wait three months for sentence.

**Hon. Mr. Walker:** I think you will find that very few of them are waiting for sentence in terms of proportion.

**Mr. Stong:** That one third is all right.

**Hon. Mr. Walker:** Basically, they are remanded for a week to get a pre-sentence report.

**Mrs. Campbell:** They often don't get them in that time.

**Hon. Mr. Walker:** We don't have a backlog in our PSRs. We are preparing PSRs awfully quickly. Obviously, some might be remanded for psychiatric examination, in which case that's an understandable situation.

**Mr. Stong:** But that's not categorized either. These figures are misleading.

**Hon. Mr. Walker:** Chief Judge Rice proved in his experiment that a case can come on within three months, and there is no denial of justice. The Law Reform Commission of Ontario, a very respected body—in fact, very respected worldwide—came to the conclusion in 1973 that cases should come on within three months. There are very few valid reasons why a case should not come on by the third month.

**Mr. Stong:** Probably the only reason is the unavailability of counsel, the counsel of his choice. If we as legislators are prepared to get rid of that proposition—

**Mr. Lawlor:** That's not the only reason.

**Mr. Stong:** There might be others.

**Mr. Lawlor:** Another could be that the court itself has backed up.

**Mr. Stong:** No, I think that's been overcome. This College Park is working in a tremendous way. The facilities are there and

they can have trials within 90 days, which is a good thing. For the deterrent aspects and everything else, it is good to have the trial early. You don't punish your child three months after you catch him doing something bad; you punish him right away. As a deterrent, 90 days is a good rule. Really, in the College Park experiment particularly, the unavailability of counsel is probably the main reason for any delay over three months.

As a legislator, I am not prepared, quite frankly, to say that a person cannot have his choice of counsel just because I want him to conform to a rule of procedure that says, "You must have your trial within 90 days, because it's costing us too much to keep you in our institution." I don't go for that. I think the balance of priorities should be heavily weighted in favour of a person's right to his choice of counsel.

As a legislator, I am not prepared—and I hope the minister would not be prepared—to say to anyone, "Trial at all costs within 90 days," even if that person is forced on without a lawyer, which would never happen.

**Mr. Lawlor:** The unavailability of counsel is certainly a major factor, particularly when an accused who has counsel switches.

**Mr. Stong:** Yes.

**Mr. Lawlor:** He finds on his second try to catch somebody that lawyers are leery about stepping into the shoes of someone who has conducted the whole thing up until that point.

**Mr. Stong:** I am sure statistics could be compiled on this. All they would have to do is look at the backs of the information in court to see whether an accused has changed counsel. That is documented and that statistic would be easy to compile.

I am prepared to say right here that, in my experience, that would occur very infrequently, that a person is playing a game by switching lawyers. We get that. It happens. We know that. But it's minimal. I don't think that would form even a fraction of a percentage of what you call a problem. I will not be convinced there is a problem, quite frankly, until I have all the statistics before me. It distresses me to read in the paper about people taking swings at defence counsel.

**Hon. Mr. Walker:** Wait a minute now. I agree with your basic defence of defence counsel. I support the position you have taken.

**Mr. Stong:** Well, don't attack them any more. Don't allow yourself to be left open so that you can be misquoted.

**Hon. Mr. Walker:** I can accept some things in life, but taking responsibility for newspaper articles is not one of them. I find that a difficult measure to meet. I know no one in your party has ever been—how shall we say it?—wrongly quoted or quoted out of context, referring only to a small proportion of the matter discussed. I know Mrs. Campbell has total support for everything written in the newspaper and believes everything.

**Mr. Lawlor:** There are ways of rectifying that, for which you may take as your model the Attorney General of this province.

**Hon. Mr. Walker:** Go on sabbatical?

12:50 p.m.

**Mr. Lawlor:** If the Attorney General is misquoted or if he disagrees with an editorial, invariably, the next day there is a lengthy letter in the newspaper. It's a pure piece of justification if I've ever seen one, but there it is and it is well done.

May I bring up another subject? I mentioned it earlier. On page 20 of the Madden report are listed the offences leading to incarceration, two solid pages of offences, broken down according to sentence and the remands that arise out of them; for instance, under assault charges, 156 remands, 248 either sentenced or remanded, or 10.2 per cent. There is a whole series of the various types of assault, such as assaulting a police officer, aggravated assault, et cetera, and offences against property.

At the bottom of page 21, after going through this very lengthy list, they say, "A count was made of the number of inmates who were in because they were either charged with or convicted of a serious or violent crime." That's the category this is all based upon. All the rest of them are not considered serious or violent crimes.

Crimes included in the serious list are abduction, kidnapping, assault, assault of a police officer, murder, manslaughter, rape, attempted rape, robbery and armed robbery. A total of 576 or 23.7 per cent of the jail population of the province fell into this category. As for the rest, they didn't fall into this category. Nevertheless, they were included among the notorious 17,000 cases.

I think it might be the other way. As I said earlier, I notice that impaired driving is listed as a nonserious offence along with other liquor offences. With many of the offences listed here, it depends on the circumstances. It depends on the factors surrounding each case, as to whether it's serious or not.

**Hon. Mr. Walker:** That's right, but if the offence does not result in a sentence of incarceration—even allowing for a judge saying to a person, "I'm taking into account the time served"—if it results in a suspended sentence or probation or acquittal, then one has to ask, if it was all that serious in the first place, whatever it was.

**Mrs. Campbell:** With respect, I think you have to look at these cases, particularly sexual offences. You can't say it wasn't all that serious, except in the mind of the judge. It may be that in the view of society it was rather serious.

**Mr. Lawlor:** Secondly, it may be serious in the mind of the crown attorney prosecuting. He has this fact sheet in front of him, but he may not be able to prove it. In other words, only at the end of the day can the seriousness be determined. It may appear at first to be a very serious offence, sufficient to require incarceration; then afterwards you say in fact it isn't. That's the whole purpose of the trial process.

My final statement is that as I hear the debate this morning—and I thank you very much for your comments—the whole position here is grossly—and I use the word advisedly—exaggerated. The proper determinations were not made. You can't go off half cocked on that kind of thing and do justice to your department or do justice to the system itself and bring under pillory a whole host of individuals who cannot be held liable if the system is to work at all.

I don't want to sit here making a defence of defence counsel. I don't identify with them. I think, more than Mr. Stong does, that they are to some degree self-serving.

**Hon. Mr. Walker:** Can we say this, Mr. Lawlor, If 27,000 of the 39,000, nearly 40,000, remands are remanded for a significant period of time, a third of them for longer than seven days, and do not ultimately receive a sentence of incarceration following their trial, are you saying that is something I should ignore?

**Mr. Lawlor:** Something that should be ignored? No, I don't say it should be ignored. I think you have a job to do which you have failed to do, and that you went off, ill-advisedly, into the wild blue yonder without knowing what you were talking about.

**Hon. Mr. Walker:** I have not gone off into the wild blue yonder. I have merely said we have a concern. This is admitted by everybody who has taken a look at it, the Attorney General and everybody else. In fact, I think you agree there is a concern. Having



agreed to that, the question I ask is, do you think I should ignore this?

Mr. Lawlor: No.

Mr. Stong: Nobody said that.

Hon. Mr. Walker: Having said I shouldn't ignore it, tell me what your solution is.

Mr. Stong: Don't come out blaming defence counsel.

Hon. Mr. Walker: Wait a minute. Don't you say I came out blaming defence counsel.

Mr. Stong: You allowed yourself to be misquoted.

Hon. Mr. Walker: Wait a minute. You just admitted the arguments I offered were reasonable.

Mr. Stong: Find out what the cause of the problem is.

Hon. Mr. Walker: That's exactly what we're trying to do.

Mr. Stong: One thing would be to categorize these things properly.

Mrs. Campbell: Don't do it publicly. Do it within your ministry and the other ministries, so that when you do make a pronouncement as to what the causes are you have the proper information upon which to base that statement. I think that's all we're saying.

Hon. Mr. Walker: You can't have it both ways. If I had said nothing about this, then you would have been saying, "You've got a responsibility for bringing this matter to the public's attention."

Interjections.

Hon. Mr. Walker: That's what Mr. Stong said when he started this thing off, that we should be bringing these things to public attention.

Mr. Stong: You have a responsibility to give the public accurate information.

Hon. Mr. Walker: I gave them accurate information. What we are arguing about is where the blame lies. I'm not interested in who is to blame. What I am interested in is trying to solve the problem, regardless of where the blame lies.

Mr. Stong: You use the word "blame" and we use the word "cause." What you want to find out is what is causing this, if there is a problem.

Hon. Mr. Walker: That's exactly right. I can't dispute what you're saying at all.

Mr. Stong: I'm not convinced there is a problem.

Mr. Lawlor: We will end up the day friends on this basis: Sometimes you have to use a squib or even a ton of dynamite to

achieve a shock effect that is probably altogether beneficial when seen at the end of the day. I hope the shock effect was the same for you. Nobody pays attention to you until you act like a damned fool.

Hon. Mr. Walker: I made the statements in my estimates last year, and no one on this committee took up the cudgels for my complaint at that time. I certainly have to say there seems to be a little more attention being paid to them at the moment.

Mr. Stong: Mr. Chairman, now that the opening statements are finished and we will be getting into the votes, I wonder if, preliminary to getting into the votes, I could ask the minister, since he wears two hats, if he also gets a salary as Minister of Correctional Services?

Hon. Mr. Walker: Oh yes, I get twice the salary.

Mr. Stong: What happens to that salary? It appears under this vote and likewise under the estimates of Correctional Services. What happens to it?

Hon. Mr. Walker: I think if you look at the estimate you will find that in fact there is no salary for the Provincial Secretary for Justice.

Mr. Stong: There is a salary here.

Hon. Mr. Walker: I think you're looking at the 1979-80 estimates. Look at the 1980-81 estimates.

Mr. Stong: I am looking at the 1979-80 estimates, right. I'm sorry about that. I was looking at the wrong thing. We are deprived of a vote on this. We can't even vote you not get a salary now.

Hon. Mr. Walker: I can't believe you would do that, after my bringing in estimates that are two and a half per cent lower than what you approved in this very committee last year.

Mr. Havrot: Good management.

Hon. Mr. Walker: Good management, yes. I accept the all-party accolade on the good management.

Mr. Vice-Chairman: It's interesting to note how the lawyers on this committee band together and close ranks when they are accused of any sort of wrongdoing.

Mrs. Campbell: Could I just ask a quick question, Mr. Minister? Did you respond to the suggestion of Mr. Lawlor that it is important the secretariat be inviolate, that it have its own function and not be attached to Correctional Services?

**Hon. Mr. Walker:** I thought that was Mr. Stong's suggestion.

**Mr. Stong:** It was my suggestion.

**Mrs. Campbell:** I'm sorry. Did you respond?

**Hon. Mr. Walker:** I didn't respond to that.

**Mrs. Campbell:** Perhaps you could just quickly give us your view.

**Hon. Mr. Walker:** That was a very interesting observation you made, Mr. Stong, and I appreciate that it is shared by your colleague; however, an authority greater than I makes this decision.

**Mrs. Campbell:** Sounds like God.

The committee adjourned at 1:01 p.m.

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**From the Provincial Secretariat for Justice:**  
Crispino, L., Policy Development Officer









No. J-13

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Provincial Secretariat for Justice

**Fourth Session, 31st Parliament**  
Thursday, May 22, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC



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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, MAY 22, 1980

The committee met at 4:15 p.m. in room 151.

### ESTIMATES, PROVINCIAL SECRETARIAT FOR JUSTICE (concluded)

On vote 1301, justice policy program:

**Mr. Lawlor:** I have two questions for the minister, neither of them relevant to these estimates.

**Mr. Vice-Chairman:** That's all right.

**Mr. Lawlor:** Are you more or less Conservative now than you were, when back at a certain time, you attacked the arcane and craven qualities of the Progressive Conservative Party? I don't expect you to answer that question.

The second question, which I would like you to answer because it will give me an insight, is are you or are you not in favour of capital punishment?

**Hon. Mr. Walker:** I am in favour of capital punishment—

**Mr. Lawlor:** That is what I would have guessed.

4:20 p.m.

**Hon. Mr. Walker:** —for certain defined crimes.

**Mr. Lawlor:** All the "serious" ones, I suppose.

I asked you the other day about the juvenile situation and I know you have some notes on it. Could you bring us up to date as to what the score is on that?

I want it known that there is only one member from the opposition parties sitting here at the present time and I think it is a bloody disgrace.

**Mr. Vice-Chairman:** I beg your pardon, Mr. Lawlor.

**Mr. Lawlor:** Oh, the chairman is from my party, of course. He is always on the qui vive, alive and well and living in western Toronto somewhere.

**Mr. Vice-Chairman:** Thank you, Mr. Lawlor. We have another opposition member approaching now.

**Mr. Lawlor:** Hansard, I take it all back.

**Hon. Mr. Walker:** Mr. Lawlor inquired about the federal Juvenile Delinquents Act which, as you know, was introduced in 1908. Basically, Mr. Lawlor, it has been unchanged since that time. The status at the moment is that it is still unchanged.

At the last estimates of the Provincial Secretariat for Justice in November 1979, Mrs. Campbell asked for a briefing on the Juvenile Delinquents Act. That was provided to the critics of the parties, to Mr. Renwick, Mrs. Campbell and Mr. Stong. A complete briefing was given them by the secretariat some time after the new year.

There was a stalemate for a while. The ministries across Canada responsible for justice and involved in the question were asked to reply by December 31. That deadline was not totally met in our case, but by the end of January we were able to put forward our position on a host of matters involving the Juvenile Delinquents Act. I know all the other provinces have done the same. Most of them dragged their heels a bit, because during that time a federal election was called and a new Solicitor General and a new Minister of Justice were appointed. Both the new Solicitor General and the new Minister of Justice have indicated to me in writing their interest in continuing the dialogue. I have to assume it will not be long before some significant changes are put forward.

On October 28, 1979, the then Minister of Justice, Senator Flynn, put out the position paper of the federal government on the Juvenile Delinquents Act, and asked for our views on it. Those views are now being digested. I assume it will not be long before something will develop.

One of the questions asked concerned a uniform maximum age for "juveniles." As you know, the provinces now have various maximum ages. Some provinces use 16; I think Quebec uses 17; and other provinces use age 18. We indicated that our desire was to have a uniform maximum age of 16.

**Mr. Lawlor:** Why, because it's too disruptive of your other system? You don't want to go to 18,

**Hon. Mr. Walker:** No. I think a juvenile is more properly a person under 16. That is my personal feeling. I suppose that is because that is the way it is in Ontario and it is easy to adopt that position. I am sure Quebec could well take a similar position on age 17. The result will be very interesting.

It certainly has a lot of bearing on our own situation. If the age were greater than 16, all kinds of special detention centres would have to be provided for juveniles. There are a number of people presently in jail in the Ontario system who are over the age of 16 but—let's put it this way—who are somewhat past their 16th birthday but younger than 17 or 18. It would be fairly dramatic. It would involve providing a number of new institutions across the province. That would probably be a difficult thing to adjust to.

**Mr. Lawlor:** Just one question on that: Is there any kind of consensus on that age across the country?

**Hon. Mr. Walker:** No. It remains to be seen, of course, what can be distilled from the views expressed by the other provinces. At the moment we have to say that there is no consensus. Certainly at the discussion last fall in Ottawa there was no feeling of unanimity on age.

**Mr. Lawlor:** Might I have a copy of that? All the critics might want a copy of that position paper. Is this the position paper?

**Hon. Mr. Walker:** No, that is not the position paper. That is the briefing paper the Provincial Secretariat for Justice provided to Mr. Renwick, Mrs. Campbell and Mr. Stong. I am also prepared to give you my letter to the Honourable Robert Kaplan dated March 25, 1980, which sets out our position. It is somewhat lengthy, of course, but they asked about specific matters and we replied.

**Mr. Lawlor:** Mr. Chairman, all we need now is an adjournment—which we never ask judges for any more—so that I can read this paper. No, I am kidding. I will look at it. Thank you.

Is there any other area that is particularly vexatious, as you see it?

**Hon. Mr. Walker:** No. Things are progressing quite well.

**Mr. Lawlor:** Do you feel the general approach to the status of a child before a court is fairly acceptable all across the board—his being represented and so on?

**Hon. Mr. Walker:** That's a rather hard question to answer in one line. My letter of March 25 is 12 pages long, typewritten on every line, and it sets out our position rela-

tive to the child before the court and how the child is dealt with in the decision.

**Mr. Lawlor:** Does the review mechanism on custody appear to have general consent?

**Hon. Mr. Walker:** Our view expressed here is a consensus—in fact, not just a consensus, but the unanimous feeling—of the Justice policy committee made up of the four ministers, but whether that is the position adopted by other provinces remains to be seen. They have not shared their views with us. Indeed, we do not know what the federal view is in response to the position we advanced by letter of March 25.

4:30 p.m.

**Mr. Lawlor:** I am looking at the section on fingerprinting because I want to make this discussion cover a broader area than juveniles. Has your ministry given consideration to what disposition ought to be made after a period of time of identifications, records, fingerprinting and all these things? Fingerprinting is done, period, generally speaking. I don't want to get too deeply into the powers of the Attorney General (Mr. McMurtry), actually, but we didn't touch on it this year in his estimates.

Does your ministry have any recommendations to make? These fingerprints hang around, even after acquittals occur, and are available. I think they ought to be destroyed, not just placed away in secret files or sealed or some other thing, in most cases within a short time after acquittal, and, in cases involving minor crimes, within a reasonable period of time.

**Hon. Mr. Walker:** The position we took, basically, was that from an administrative point of view it would be quite a problem to accept the recommendation which was subsection 2 of the proposed new Juvenile Delinquents Act. Our recommendation was that a decision be made at the proceeding, on request, and clearly set out during the proceedings in the appropriate paperwork; that a decision be made at that point about the disposition of fingerprints.

**Mr. Lawlor:** On request?

**Hon. Mr. Walker:** On request. If a person was not interested or was not concerned in any way about the existence of a fingerprint record, far be it from us to be concerned.

**Mr. Lawlor:** You did mention the other day the fairly substantial reduction in your estimates. The actual appropriation from 1980 was \$406,000. You had asked for \$438,000. Now you are down to \$395,000. I didn't catch the reason for that.



**Hon. Mr. Walker:** I am afraid I have to plead good management in this case. The two and a half per cent reduction in our estimates, I am embarrassed to say, has resulted merely from efficiencies within the ministry, and I apologize for that. I know it is normal to come before a committee and request more money—

**Mr. Lawlor:** Don't beat your breast about it.

**Hon. Mr. Walker:** —but we are embarrassed to say that we can't claim the normal defences and we have no alternative but to admit that it's been our management.

**Mr. Lawlor:** You are not answering the question, Mr. Minister. You are skating around it with your self-congratulation. What were all these efficiencies? How many people did you fire?

**Hon. Mr. Walker:** I think it was, rather, economies of scale within the actual operating budget. The number of people we have within the ministry is very modest and that modest complement has been continued, it being what we consider the bare minimum. However, we made certain reductions in terms of what we would spend on day-to-day events.

Obviously, one of the economies would be the elimination of the provincial secretary's salary. Now that didn't take it down the full two and a half per cent. It was a long way from that, of course, but that's one economy. In addition, when I took over as the provincial secretary on August 28 or August 30, 1979, I found it was not necessary to have the same complement my predecessor had. There were people who had previously worked with him and who were on contract, and it was not necessary to renew their contracts.

**Mr. Lawlor:** One, two?

**Hon. Mr. Walker:** Oh, about one and a half, I think.

**Mr. Lawlor:** What do you mean by services? That figure is reduced.

**Hon. Mr. Walker:** I think "services" is more your word than my word, but it costs us so much to operate our place. We have the normal overhead of any small ministry. We spend so much for typewriters, ribbons, erasers and the like. We have been able to keep this at a reasonable cost. Our overhead is somewhat more reasonable this time than it was previously. I guess that is not the right way to put it. Our overhead is lower this time than it was before.

**Mr. Sinclair:** Mr. Chairman, there is another reason. A substantial amount involved in this figure is printing costs, which previously were not under the services section of the budget, but now are, throughout the government. They were under supplies and equipment previously.

I'm sorry, it's the other way around.

**Mr. Lawlor:** Yes, supplies and equipment have leapt considerably.

**Mr. Sinclair:** That's right, because of the printing reallocation.

**Mr. Lawlor:** I have a note that was left over from the estimates of the Ministry of the Attorney General. This is from the *Globe and Mail*: "Some judges should undergo medical and psychiatric training and specialize in cases involving the mentally ill," county court Judge Lloyd Graburn told 50 members of the Ontario Friends of Schizophrenics last night. Mr. Graburn said, 'Most judges know little about mental health issues and the special circumstances of many mentally ill accused persons.'"

Do you discuss the bench at all in your ministry?

**Hon. Mr. Walker:** From time to time matters involving the bench come up, but remember, the Provincial Secretariat for Justice is geared towards co-ordinating general policy for a number of ministries. As I mentioned in my opening comments, each piece of legislation has first to flow through the cabinet committee on justice, and it is vetted very carefully there. Certain policy matters are discussed by the cabinet committee and then flow on to cabinet in the form of a recommendation. We do not usually discuss matters such as judges, employees, crown attorneys, correctional officers or other matters which are specific to the individual ministries.

**Mr. Lawlor:** Just to come back for a moment to the federal Juvenile Delinquents Act, would you be good enough to let me have a copy of the federal position paper on juvenile delinquency? Is that possible? I do not have a copy of it.

**Hon. Mr. Walker:** I think we can supply you with one. Would you look after that, Mr. McConney?

**Mr. Lawlor:** That is pretty well all I have, Mr. Chairman.

Vote 1301 agreed to.

**Mr. Vice-Chairman:** This completes the estimates of the Provincial Secretariat for Justice.

**Hon. Mr. Walker:** Thank you very much, Mr. Chairman.

**Mr. Vice-Chairman:** There are a couple of procedural matters.

We are going to be debating Bill 1 tomorrow and Wednesday. On Thursday we will consider private bills. On Friday we will be starting the estimates for the Ministry of Correctional Services.

It is my understanding that committee members have agreed to a road show on the following Wednesday; that's a week from next Wednesday. The committee will be travelling to Burtch Correctional Centre.

4:40 p.m.

**Mr. Bradley:** Is that May 28?

**Mr. Vice-Chairman:** No. June 4. We will be travelling to Burtch Correctional Centre. I just want to get a sense from the committee of how much time we should allot to the estimates of the Ministry of Correctional Services as far as this trip is concerned. It is my opinion that whatever time we spend there should be deducted from the estimates. Is that agreeable?

**Hon. Mr. Walker:** I would be prepared to accept that.

**Mr. Bradley:** This is based on 10 hours?

**Mr. Vice-Chairman:** Based on 10 hours. Is that your understanding, Mr. Minister?

**Hon. Mr. Walker:** I don't know what the hours are. I notice that on the back of the Order Paper it says five hours, but I have

heard 10 hours. I don't know what it is. I presume there should be time both for going to Burtch and for dealing with the estimates directly.

I don't know how it breaks down. I guess that's up to the House leaders to figure out. It's not my function and I don't think it is properly the function of the committee.

But we would like to work in a trip on that Wednesday. I believe the Correctional Services critics from the Liberal Party and the New Democratic Party have both indicated their desire to go to Burtch and we would like to accommodate that desire. We will make the arrangements for Wednesday, June 4.

**Mr. Vice-Chairman:** Thank you, Mr. Minister. On behalf of the committee, I would like to thank you and your staff for your co-operation and help during these estimates, and I wish your staff well in the coming year. Spend the money wisely.

**Hon. Mr. Walker:** I can assure you, Mr. Chairman, we will. If we can reduce it again next year, we certainly will.

**Mr. Vice-Chairman:** We also need a motion to approve Hansard transcription for our discussion of Bill 1.

**Mr. Havrot** so moves.

Motion agreed to.

The committee adjourned at 4:43 p.m.

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From the Provincial Secretariat for Justice:  
Sinclair, D., Deputy Provincial Secretary







No. J-14

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Correctional Services



**Fourth Session, 31st Parliament**  
Friday, May 30, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, MAY 30, 1980

The committee met at 11:37 a.m. in room 151.

### ESTIMATES, MINISTRY OF CORRECTIONAL SERVICES

**Mr. Chairman:** I see a quorum.

Last night the Speaker gave the member for High Park-Swansea (Mr. Ziembra) until the sitting of the House on Monday to withdraw remarks he had made about another member of the House. It is my opinion that it would not be proper to exclude the member for High Park-Swansea from this committee until the matter is brought to a conclusion in the House. It is an opinion that was shared by the Clerk of the House when I consulted him and when he had had an opportunity to read the Hansard of May 29. I trust that is acceptable to the committee.

**Mr. Rotenberg:** Nobody raised the point. I do not know why you did, Mr. Chairman.

**Mr. Chairman:** I thought someone might raise the point. I thought it was much easier to deal with it initially than to worry about having a long debate later.

We will now commence the estimates of the Ministry of Correctional Services.

**Hon. Mr. Walker:** Thank you, Mr. Chairman, for this opportunity to present to you today the estimates for the Ministry of Correctional Services.

Each of you has a briefing book which sets out in detail the ministry's operations and cash flow requirements for the current fiscal year. Before discussion of the financial estimates, I would like to make an illustrated opening statement with two objectives in mind: first, to bring you up to date on the ministry's activities since we presented our estimates last April; second, to outline in some depth the ministry's ambitions for becoming as self-sufficient as possible in meeting many of its own needs.

11:40 a.m.

A year ago the number of inmates in our 80 facilities throughout the province aver-

aged 5,615 on any given day. Our hope was to see a 1,000-inmate decrease in that average daily count, principally through the sentencing of more petty offenders to community programs and through a decline in the number of jailed people awaiting trial for minor offences.

Frankly, we fell short of that 18 per cent reduction. Nevertheless, impressive progress was made. By the end of the 1979-80 fiscal year, our inmate population count averaged 5,435 daily, a reduction of 180 inmates, or four per cent.

The stabilization of the jailed population in a period of rising crime and more efficient policing is a real accomplishment, we feel. Our statistics show that, in the absence of changing sentencing patterns and the creation of community-based correctional alternatives for low-risk offenders, the inmate population count would probably—and probably without question—have increased by almost 500 daily. That would have pushed the average daily count to over the 6,000 mark.

I was looking at some of the inmates up there in the slide and I do not know how we got to 6,000. Perhaps we counted all those in that photograph.

**Mr. Ziembra:** What did the dog do?

**Hon. Mr. Walker:** I was going to say something like, "It represents a new concept in community sentencing."

**Mr. Chairman:** You will notice that the dog does not have any of its legs maimed. That is because of a bill that was passed called an amendment to the Game and Fish Act.

**Hon. Mr. Walker:** Ah, yes, no more leg-hold traps. We have those in our institutions, but none here.

There are now about 600 fewer people in jail today than there would have been if new programs and improved co-operation within the total criminal justice system had not occurred. Underlying these figures is an important development. Ten per cent fewer

inmates are serving time in our longer-term institutions, but our front-line facilities, the jails, are near capacity due to the sharp increases in short sentences and remands.

While the overall institutional count is down, the number of offenders on probation has risen dramatically, by 14 per cent since last year, to a case load of approximately 30,000 probationers a year. This shift to community sentencing for low-risk law breakers is the fundamental undercurrent reshaping correctional services in Ontario.

Last year we encountered difficulties with people serving their sentences on weekends. We found these intermittent inmates caused administrative problems by arriving en masse Friday nights. They increased staff overtime costs, disrupted normal jail programs, created overcrowding and security strains.

Two major problems were that many intermittents arrived drunk and brought drugs into jail. They considered their weekend stay in jail a bit of a joke and a significant number would not even bother to show up, which led to enforcement problems for the police and extra court time for reappearances.

The problem was resolved in consultation with the judges of Ontario. Much greater use is being made of instant temporary absence, whereby these offenders are able to work or continue their schooling during the day, returning to jail every evening.

While this increased use of short-term but continuous sentencing has kept our average inmate population count at a higher level than we had projected, the benefits are worth while. Drug and drinking problems have decreased. We have a firm and regular control over the inmate's behaviour. We are in a better position to enforce discipline. The failure-to-show rate has dropped, saving both police time and court time for dealing with those unlawfully at large. Greater respect for the criminal justice system has been established. By maintaining useful employment, these offenders support their own families or complete their education.

This turnaround of a serious problem in only one year illustrates what can be done quickly by a co-operative approach throughout the criminal justice system. Temporary absence is a sentencing and correctional alternative that has proven its worth time and time again over many years.

The selection process is extensive. It begins with the recommendations made by the bench at the time of sentencing. Our staff reviews the inmate's file and interviews him to determine his attitude, skills, grasp of self-responsibility and willingness to learn

from his mistakes. Suitable inmates are then helped to find a job, and, if successful, placed on temporary absence. While many inmates in our jails or correctional centres are released to daytime work, many temporary absence candidates are transferred to a CRC, a community resource centre, which is a form of halfway house.

Currently we have 29 of these correctional residences in the province, handling more than 300 inmates at a time. This fiscal year, we propose to open six more CRCs. These community residences cost the taxpayer about \$24 per day per inmate to operate, compared to \$54 a day for the traditional institutions.

Our success rate with these community resource centre inmates is truly remarkable. A recent study shows that less than nine per cent failed to abide by the strict discipline and self-responsibility obligations of this program. In these cases, temporary absence was revoked and the inmates were returned to the formal correctional centre. Some needed alcohol counselling; others needed further training in trade skills or life skills. A few were simply not ready for the pressure of re-establishing themselves in the community. Others required greater discipline.

Overall, however, our temporary absence program, is an almost perfect correctional measure for a certain type of inmate—and I emphasize "certain"—who welcomes the chance to redeem himself. You will be surprised to learn that since temporary absence was introduced in 1969 103,000 inmates throughout Ontario have participated.

What about inmates who cannot make the grade for temporary absence? Our basic philosophy is that anyone sentenced to our institutions should be put to productive work. We do not want criminals, no matter how petty the offence, sitting around doing nothing useful at an operating cost to the taxpayer of more than \$54 per day per inmate. Inmate work is the new imperative. We intend to run a productive rather than a passive correctional system.

A good deal of progress has been made in this direction during the last year. We assigned inmates to clean up flood debris in Dover township near Chatham, to fight forest fires in northern Ontario, to pick tobacco in Kent county, to shovel snow and do house repairs for senior citizens in many communities, to paint community centres, clean up public parks and so on.

As you know, we operate a variety of academic and vocational training programs for inmates. We have treatment programs for alcoholics, drug addicts and those with per-

sonality disorders. We have instituted programs that are designed to teach inmates basic survival skills, from how to apply for and get a job to money management and simple cooking abilities.

Often a short sentence precludes the offender from being transferred to an institution which provides specialized long-term training or work. The offender with a short sentence usually spends his time in a local jail or detention centre. He is with us all too briefly for us to do anything with him in a rehabilitative sense.

11:50 a.m.

One solution to this problem, which I have already described, is the instant temporary absence, but another alternative which has proven most popular with judges throughout the province is the community service order. This time last year, there were 950 offenders throughout Ontario serving their sentences by completing a specified number of hours of community work. This, by the way, was a threefold increase over the previous year. It is most amazing but for a one-year period ending 1979, for the calendar year 1979, the number of community service orders was 5,867. We think that is a fairly significant growth in just a year and a half's time from 950 the year before. We felt the number was far short of the potential for this sentencing alternative.

One perceived need was for us to organize supervision of CSOs or community service orders with volunteer agencies in many more than the 12 communities where the program was in place. Another need was to familiarize more judges with the community service order program and its remedial benefits.

What a difference a year has made. Today, there are 1,600 offenders serving their sentences by doing community work with 150 new orders being issued each month. So you had better not confuse the figures for a calendar year period. The cumulative number was 5,867, but as of this very day 1,600 of them are at present in effect and being operated.

Province-wide during 1979 the private agencies were contracted in 30 communities to supervise offenders and ensure they completed the work sentences handed down by the bench. This fiscal year we hope to expand programs for community service supervision to a further 20 communities in regions where the need is pressing, particularly in the north.

This program has proven its tremendous remedial benefits and, from our point of view, alleviates several concerns about having a

congestion of petty offenders incarcerated for short terms.

A vandal or repeatedly drunk driver doing 30 days in one of our jails is likely to become somewhat remorseful, embittered and lose his job, at great expense to the taxpayer in the long run. But requiring that vandal to work 60 or 100 hours repairing public property or a senior citizens' home, requiring that drunk driver to help a hospital emergency department on a Saturday night, or to assist disabled children, has a very positive effect in reawakening a sense of the opportunity for being a responsible member of the community. It also deepens the appreciation of what justice itself is all about.

Our community service order program benefits the offender, who learns that the consequence of law breaking is hard work; benefits the community, which receives assistance that would not otherwise be forthcoming; and, far from least, benefits the taxpayer, who does not have to waste money involuntarily on room and board for irresponsible people.

Another remedial approach that is gaining momentum in Ontario is the concept of victim justice whereby the offender is required to repay his victim directly for losses or damages. A judge can order restitution under section 663 of the Criminal Code. However, until last year, few mechanisms existed to ensure that the victim repayment process worked. Consequently, many judges were reluctant to order restitution without the assurance of enforcement. The need was for an impartial intermediary to bring the offender and victim together, ensure that a voluntary and fair settlement was negotiated and, when this was endorsed by the bench as a condition of probation, see to it that the offender did do what he pledged to do.

Last year we talked about the program. I can tell you that today this mechanism is now in place. It is called VORP, victim-offender reconciliation program.

Just this time last year, we had only three of these projects in the whole of Ontario. With VORP, we now have victim repayment projects operating in 14 communities.

There are currently 3,500 offenders making repayment to the victims of crime as a condition of their probation. That represents nearly 12 per cent of our probation case load, so we think we have come a long way in just a year.

The response of the judiciary has encouraged us to accelerate the expansion of victim repayment projects. This fiscal year, we plan to establish victim-offender reconcilia-



tion programs or restitution projects in seven further communities. That will give us a total of 21.

As I discussed in detail a few weeks ago in this same committee, one of our most difficult and continuing problems is the number of accused people in our jails awaiting charges or trial. On any given day, approximately 1,200 people are in provincial institutions on remand. They represent one quarter of our total inmate count and 40 per cent of our jail population.

There is no disputing that some people are dangerous to society and must be locked up until they appear in court for trial, but the problem is that the bench does not have a satisfactory alternative for many people who are accused of minor and nonviolent crimes. We believe we have now discovered one satisfactory solution. Last year we talked about it, late last year we experimented with it. It is called bail verification and bail supervision. We now have projects in four communities, Toronto, Kitchener, St. Catharines and Hamilton.

When a person is arrested, a bail verifier supplied by a private agency is contacted by the desk sergeant, visits the police cells, interviews the accused and prepares a report on the accused's suitability for bail. This verification report is submitted at the show-cause hearing.

While it is still too early to make a reliable assessment of the program's success, we do have some interesting figures. Between the beginning of January and the end of March this year, bail verifications were made for 874 accused people—that is in three months' time. In addition, 492 interviews were conducted with inmates already in our institutions, to facilitate their release on bail. By the end of March, a total of 293 individuals were in the community waiting trial under the supervision of our bail project staff. We are quite pleased with the early results of these projects. We expect that while the remand population in jail continues to grow throughout the province, it will stabilize or be reduced in the project areas.

Again, using the resources of private community agencies, the accused is supervised by trained volunteers, who keep track of the individual's whereabouts, continued employment and general behaviour.

During the current fiscal year, we plan to expand the bail verification and bail supervision program to cover 14 locations. That is up from four. We will now be covering 14 locations across the province. It is fair to say that we are having a lot of

difficulty keeping up with the demand for it.

We are heartened by the encouragement the project has received from judges, crown attorneys, defence counsel and the police. If bail verification and supervision is used to the degree that we believe is justified and feasible, then the persistent problem of a high proportion of remands in jail for petty offences will be corrected. Meanwhile, the numbers on remands in our jails remain our single biggest problem.

I would now like to comment briefly on a new program we have introduced for offenders on probation.

Several studies have shown that employment is an essential prerequisite for the successful rehabilitation of an offender. The successful probationer, for example, tends to be an offender who is fully employed by the time he has completed his probation. By contrast, a probationer, or a newly released inmate for that matter, who cannot get and hold a job is likely to end up in trouble again.

A study commissioned by the ministry reveals that just about half of all probationers are unemployed. Some are jobless with reason, such as students and housewives. However, one third of all probationers spend much of their probation period unemployed despite being able to work. That means there are currently some 10,000 offenders on probation in Ontario who are able-bodied, but frequently unemployed.

#### 12 noon

Typically, they are young, single men, often from unstable homes and with low levels of education. The youth employment picture at present is particularly bleak. We suspect that the inability of these youth to obtain jobs—any jobs—is partially responsible for their criminal activities. Many are caught on a merry-go-round of poor education, inability to get a job, inability to hold a job once they get one, and this leads to decreasing levels of self-esteem and motivation. Persistent failure in job-related endeavours will lead to high levels of frustration, and finally to just giving up.

The importance of work as a remedial measure was confirmed in another study we conducted in Ottawa. There, in a one-year follow-up study, we found that employed offenders had a reconviction rate of only 11 per cent, compared with a 27 per cent reconviction rate for the unemployed offenders. Consequently, we are escalating our efforts to ensure that probationers and parolees are

employable and able to stand on their own two feet.

Already we have employment programs in seven communities. The programs get the offender ready for a job through counselling exercises, enable him to learn the work ethic from unpaid on-job training, and help him find a permanent job that matches his interests and capabilities.

The early results of these projects are encouraging. For example, in Scarborough, where the project is sponsored by the YMCA and the Rotary Club, there appears to be a 70 per cent success rate on employment and job retention.

The initial success of the employment program has encouraged us to expand this service to 15 additional communities. This means that by the end of the year the program will be operational in 22 Ontario communities.

It costs, by the way, about \$100 to make each offender ready for a job—a worthwhile investment if it enables the usually hard to employ probationer or parolee to join the productive economy, provide for himself and stay out of trouble.

This year, as you can see from our briefing book, we intend to make further use of community-based resources for the delivery of many low-cost, but highly beneficial, services. Private agencies and volunteers are already involved in many correctional programs.

The contracting of community agencies and their volunteer resources makes both social and economic sense. They are the concerned dimension of the community to which offenders will return. They have lower administrative costs than any institutionally based government bureaucracy and can, therefore, do many things less expensively and more flexibly. These mature volunteers can develop positive personal relationships with many young offenders in ways that correctional officers and probation officers just can't be expected to, since they have a duty to enforce discipline and security and are seen in a different light.

Our policy is deliberate in returning to the community as much responsibility as common sense dictates for the handling of minor offenders. This can be done successfully without any threat to public security.

The privatization of correctional services has enjoyed phenomenal growth. Last year we had contracts with 88 agencies in various Ontario communities, including agreements for the management of our community resource centres. This year we are signing more

than 150 individual contracts for a taxpayer cost of \$7 million, compared with a little under \$4 million last year. We are doing more—and we're getting more done—per dollar of increment. We are putting limited funds into the facilities and the programs and the willing communities where the need and the solution exist.

Not only is this approach highly cost beneficial in its own right, but it has helped us to absorb the growth in our work load without a corresponding increase in staff. In fact, the probation staff has increased by only 100 officers since 1969, during a period when the case load has almost tripled.

This, I hope, gives you a current picture of our problems, accomplishments and continuing activities. I would now like to outline the new pragmatic philosophy that is guiding our management of correctional services. In a word, it's called "self-sufficiency."

Our self-sufficiency program has evolved from two separate realizations. One, as I mentioned earlier, is the principle that everyone in the correctional system should be doing something productive, as a remedial measure as well as a cost offsetting measure. The other realization is that, in a period of fiscal restraint and taxpayer intolerance, we must adjust to getting by with fewer real tax dollars.

In the last fiscal year we launched an aggressive cost-cutting campaign in response to rising inflation, higher suppliers' costs, higher operating costs and wage settlements. By last fall we had eliminated the \$4.5 million potential cost overrun identified in the summer. Avoiding that cost overrun was not just a bookkeeping exercise; it involved real cuts in real programs and real activities. You will be pleased to know that the Ministry of Correctional Services actually concluded the last fiscal year \$2.2 million under budget. We turned back to the Treasury over \$2 million cash.

**Mr. Ziemba:** Is that your operating cost or capital cost?

**Hon. Mr. Walker:** Operating cost only. This cost-cutting campaign involved all senior and middle management in the ministry. These public servants contributed ideas on programs and services that could be eliminated or postponed or which could be made more efficient. But we have little cost-cutting latitude left. Our operations are about as lean as they can be without jeopardizing institutional security.

The bulk of our budget, as you can see from the briefing book, is spent on salaries for our 5,500 correctional officers, probation

and parole officers, management people and support staff. As you know, our officers bear a special public trust in dealing with often difficult, frequently confused and sometimes extremely dangerous people. The conditions under which they work are often strained. The discipline and controlled routine of the prison system, and even the probation service, tax their skills, professionalism and ingenuity. Providing for their training, personal security and well being is as important as providing the public with security and safety from criminals.

The remainder of our budget is largely spent on maintaining and operating our institutions, several of which are old and not the most efficient to run, despite the capital improvements that have been made. Thus, while we have made deep cuts in our operating expenses, there are, inevitably, high fixed costs to maintaining a prison system. As I told the Legislature back in March, there is a cost of \$54 per day per inmate. Our institutional operating costs are higher than many leading hotel rates.

**Mr. Chairman:** How would that compare with the federal system?

**Hon. Mr. Walker:** In the federal system it is probably higher. I think it costs around \$27,000 per year per inmate in the federal system and it costs us about \$18,000 a year.

Having mentioned the cost of \$54 per day per inmate, let me say that has not dissuaded us from seeking innovative ways to control and reduce our spending even further. With this in mind, we are initiating a five-year program to make positive use of inmate labour so that correctional institutions can be more self-sufficient in meeting many of their own needs. We believe the time is ripe to place more of the correctional cost burden on the inmates and less on the taxpayers of Ontario.

12:10 p.m.

First, we plan to cut our food bill significantly by having inmates grow more of their own requirements. Some of you may remember that at one time the Ministry of Correctional Services had a fairly successful farming business. The high and rising cost of food has encouraged us to take another look at growing our own.

The ministry serves 6.3 million meals a year, which is more than many large hotel chains in Canada. The total cost of feeding inmates is about \$5 million annually. Our hope is to cut that bill by 10 per cent next year.

Starting this year, we will be converting as much land as possible at our institutions

to the cultivation of root crops and vegetables. We are beginning with the recovery of Correctional Services farm land now leased to local farmers or used by the Ministry of Agriculture and Food. In some locations, soil testing is being carried out in cooperation with the University of Guelph.

Every institution will participate in this program, including the smaller jails where vegetable gardens will be created or expanded. Larger acreages are being assembled for cost-cutting production of one or two volume crops at many of our larger institutions, which will also, in some cases, be raising chickens and pigs. Inmate labour will be used to clear and plough the land, to plant, tend and harvest vegetables and to raise the livestock.

A considerable amount of work has yet to be done in preparing the land, organizing our work programs, making arrangements for contracting, tilling and cultivation of reclaimed land so that we can avoid excessive startup costs, and so forth.

Let me give you a quick province-wide tour of what we plan to do starting this summer at our various institutions.

At the Burtch Correctional Centre in Brantford inmates will be involved in growing root crops and vegetables on their 240 acres. The produce will feed 250 inmates in this correctional centre.

Down at the Niagara Detention Centre in Thorold a one-acre garden will provide tomatoes and other fresh vegetables for 140 inmates.

Over at the Guelph Correctional Centre inmates will be assigned to growing root crops and vegetables on 34 acres, including 10 acres to be drained in an area near the Eramosa River. The produce will help feed 600 inmates at this correctional centre.

At the Maplehurst complex in Milton, offenders will raise vegetables on 34 acres of land this year. More than 1,500 inmates will be served, including offenders at Maplehurst, the Toronto jail, the Metropolitan Toronto East Detention Centre and the Metropolitan Toronto West Detention Centre. By 1985, we expect to have 114 acres under cultivation at Maplehurst.

In Barrie, 25 acres of Camp Hillsdale will be used to grow vegetables, raise poultry and pork and produce eggs. Thirty inmates will be involved in this work. This year, for the first time, some 100 maple trees were tapped for syrup. The livestock and syrup will be used by 100 offenders at both the Barrie Jail and Camp Hillsdale.



That reminds me: I have some maple syrup over in my office that they sent down. I will have to bring it in for members of the committee, if there is a day we intend to have pancakes.

Mr. Ziemba: That costs \$25 a gallon.

Hon. Mr. Walker: Yes, but we have been able to produce it for something less than that.

Mr. Williams: You will upstage Doug Wiseman.

Hon. Mr. Walker: Yes, but I will have the actual fluid instead of just those hard pieces.

Mr. Chairman: That's much better. We will look forward to it.

Hon. Mr. Walker: At the Ontario Correctional Institute in Brampton, beans, peas, squash and other fresh vegetables will be grown on some 10 acres. Inmates will grow this produce for the 200 offenders in the institute. By 1981, 76 acres will be under cultivation.

At the Vanier Centre in Brampton, vegetables will be planted in a 2,000 square foot garden for consumption by the 130 inmates. Inmates will be involved in this project and, in fact, they are already involved in raising 60 chickens for eggs.

At the House of Concord four acres will be used this summer to grow a variety of vegetables. Inmates will work full time to supply produce for 80 offenders there. By 1981, an additional 40 acres is planned to be brought into production.

Mr. Chairman: With the price of pork nowadays you are probably losing money on that particular operation.

Hon. Mr. Walker: I was hoping that slide would pass on; too many analogies are being drawn.

Mr. Bradley: I would have thought it was a cabinet meeting.

Hon. Mr. Walker: A caucus meeting, but I won't say which caucus.

At Whitby Jail, inmates will grow vegetables on two acres of land. The produce will be used by 90 offenders at Whitby and the Durhamdale Community Research Centre.

At the Millbrook Correctional Centre near Peterborough, inmates will work eight hours a day growing vegetables on a four-acre plot. Sufficient produce should be raised to supply 230 offenders in this institution.

At the Brockville Jail, inmates will be involved in an experimental program to grow vegetables on 20 acres of reforested

land belonging to the Ministry of Natural Resources. If successful, this project would yield sufficient produce for the needs of 24 offenders in that institution and an additional 16 people at the Joe Versilus Community Resource Centre in Brockville.

At the Quinte Detention Centre in Napanee, an eight-acre garden will be used to grow most of the fresh vegetables required by 100 inmates there. Offenders will be employed in this venture.

At Rideau complex near Smiths Falls 15 inmates will grow root crops and raise pigs and chickens on 30 acres of land. An additional 70 acres is expected to be brought into production later this year, which will help meet the needs of 400 offenders at Rideau, Perth Jail, L'Orignal Jail, Cornwall Jail and the Ottawa-Carleton Detention Centre.

Up in the Monteith complex, near Timmins—that's our complex north of the Arctic watershed—630 acres will be used to raise beef, chicken and pigs. Another 30 acres will be used to grow vegetables. Twenty inmates will be involved in the self-sufficiency programs, which will help feed up to 450 inmates at this institution and also at Monteith Jail, Sudbury Jail, Sault Ste. Marie Jail and North Bay Jail.

At the Thunder Bay complex, 15 inmates will grow vegetables on 30 acres. The produce will be consumed by the 350 offenders at this institution, at Thunder Bay Jail, at Kenora Jail, and Fort Frances Jail. By 1985, more than 530 acres will be used to grow a variety of fresh vegetables as well as to raise chickens and pigs.

In five years' time we hope inmates will be farming approximately 2,200 acres, and we are confident that this acreage will enable us to become totally self-sufficient in the production of essential root crops and vegetables.

A related element of our self-sufficiency program entails the expansion of the famous cannery operation at the Burtch Correctional Centre. Currently, inmates employed at this centre produce about 60,000 cases of canned food a year. Now, 60,000 cases of canned food means something like 300,000 cans of something. Tomato juice and apple juice are two of our most popular products there, I might mention. By purchasing good used equipment, we hope to extend the product lines, processing vegetables and fruits grown elsewhere in the correctional system. Surplus production will be sold to institutions operated by other ministries.

In all of this, we will avoid being entrapped in the growing of crops that can be purchased more cheaply in the local market.

We will be setting up a computer system for local cost analysis to ensure our self-sufficiency program achieves the cost savings we envisage. In fact, as produce becomes available, we will begin to remove from institutional menus items that are not primarily made from ministry products.

The farming base of our self-sufficiency program is only the beginning of a long-term ambition. The Ministry of Correctional Services will be striving for self-sufficiency in other areas as well, such as the manufacture of inmate clothing and wood cutting projects that can provide fuel.

**12:20 p.m.**

We also plan to expand our various industrial programs by developing small cottage-type industries at the longer-term institutions. Currently, about 450 inmates are employed in our various industries programs which produce more than \$2 million a year in revenues. If the supervisory costs for correctional officers are excluded, these industrial activities are actually a break-even proposition.

One such venture is the ministry-owned abattoir within the Guelph Correctional Centre. The plant, at full production, employs 240 inmates during the course of a year and processes 1,700 cattle a week.

Another successful venture is our mattress manufacturing plant at the Mimico Correctional Centre in Toronto. As many as 10 inmates are employed in making flame-retardant mattresses which are used by our ministry, but they are also sold to senior citizens' homes, hospitals and other government agencies across Canada.

At the Maplehurst complex, we have a dozen inmates making automotive parts, assembling muffler clamps and manufacturing and assembling chiropractic and X-ray equipment.

There are many other products which inmates make, ranging from barbecue grills to picnic tables, from licence plates to pyjamas. We plan to put more and more inmates into productive work, to teach them trade skills and generate new revenues. It will take time, of course, and considerable planning before new cottage-type industries are viable ventures. But they are indicative of our own thinking.

Finally, we will continue to make correctional institutions even more energy efficient. Since 1976, the ministry has reduced its energy costs by some \$1.25 million. That is since 1976. We are pretty pleased that we have been able to achieve that in some very difficult institutions. Some of our institutions

having been built in the 19th century, it is a wonder that we can save any money in energy reduction.

We plan to do more. For example, the Guelph Correctional Centre and the Ontario Correctional Institute are being converted to solar heating units for the provision of hot water.

In summary, the productive use of the inmate's time in prison and the development of his employment skills, combined with cost savings, is at the core of the Ministry of Correctional Services' self-sufficiency program. I will be reporting to you from time to time on the success of these initiatives.

We are, by choice as well as by public pressure, going through a period of dramatic change in Correctional Services. Imaginative new programs for handling petty offenders are being tested with promising results. We are working closely with concerned individuals in the community. We are supporting more equitable and just initiatives, such as victim repayment alternatives. We are worrying about the expenditures of the tax dollars while ensuring at the same time that the security of the system is not endangered. We are putting inmates to work for their benefit as well as that of the taxpayer.

Those represent my opening comments. I believe there is a matter that we should entertain at some point about the use of next Wednesday's time and I wonder if we might resolve that.

**Mr. Ziemba:** On a procedural point, Mr. Chairman: Do we have five hours or 10 hours? I thought we had agreed to 10 hours. The clerk informs us it is five hours.

**Mr. Chairman:** My understanding was there were five hours.

**Mr. Ziemba:** We have all kinds of ammunition here, enough for about 20 or 30 hours.

**Mr. Chairman:** There has been no motion in the House to change the number of hours that was passed in the original motion in the House. Unless you wish to get together with your House leader and get some agreement to have a motion passed in the House, we will be concluding these estimates on Wednesday of next week.

**Mr. Ziemba:** I am not that welcome in the House at the moment.

**Mr. Chairman:** I did not say that you should move it. I expect Mr. Wells, the government House leader, would be the one who would move such a motion.

**Mr. Ziemba:** Speaking for the New Demo-

cratic Party, we can condense our criticism into a five-hour period.

**Mr. Chairman:** It is my understanding that the clerk will be sending to each member of the committee some instructions on Monday asking which of you intend to go on our trip on Wednesday. He informs me it has already gone out. Whether we go by bus or by air depends on how many people indicate their interest.

**Hon. Mr. Walker:** I must say we have made every attempt to resolve the question of going by air, to the point of digging our heels in. Basically, we have been rebuked by the Department of Transport which has refused to permit us to land at the airport. Apparently there are insurance problems that every single air carrier has which make it impossible for us to land there with any airplane, including the Ministry of Natural Resources' airplanes.

I can assure you we have contacted both private sources and the Ministry of Natural Resources. They refuse to land at that spot. Given the alternative, it seems to me that either we land at Hamilton airport, having taken off from the Toronto Island airport, or we revert to a bus, which is probably a more sensible approach.

**Mr. Ziembra:** Or parachutes. They will drop us off.

**Mr. Chairman:** We will assume that the ministry will be arranging a bus for us.

**Hon. Mr. Walker:** We will arrange for "flying Dutchman" bus lines, or something like that.

**Mr. Ziembra:** From Hamilton or from this place?

**Hon. Mr. Walker:** Sorry, I was making a minor joke on the name. But let me be serious for a moment and say that we will arrange for a bus to leave from the front of the Legislature at the time you designate.

**Mr. Ziembra:** That presents a problem for some of us. I think that the flight would have cut down on the time and we would be back here—it would be a round trip of less than—

**Hon. Mr. Walker:** I can give you the time it takes a bus. A bus trip would take 50 minutes to go from here to there. The location is somewhat east of Hamilton.

**Mr. Ziembra:** I am only speaking for myself but I doubt that I would be able to accompany you, Mr. Minister, on such a long trip.

**Hon. Mr. Walker:** As a matter of fact, the airplane would have taken about the same

time. One goes to the island, waits for the ferry for 15 minutes, gets across and gets aboard a plane, waits while they dip their wings and practise and go through various calisthenics. By the time they get that done and get down to the location the time would be identical. It may only take 30 minutes to fly to the site, but it takes another 30 minutes to embark and disembark from an airplane.

**Mr. Bradley:** From our party's point of view and from my own personal point of view, I am prepared to make the trip. I will likely go by private automobile anyway, but I am prepared to make that particular trip. I think it would only be useful though if we had a sufficient number of the committee. I think having Mr. Ziembra would be very useful, naturally, as he is the critic for the New Democratic Party. I think it would be very useful to have both Mr. Ziembra and myself, as well as the minister there, as a minimum of participation. If Mr. Ziembra is unable to make it, I do not know how useful it would be.

**Mr. Ziembra:** You talked me into it, Mr. Bradley.

**Hon. Mr. Walker:** We are prepared to arrange for cars if the actual number of people is not large.

**Mr. Ziembra:** Mr. Bradley is coming from Niagara Falls.

**Hon. Mr. Walker:** I assumed there would be members of the clerk's staff and members of the press who would want to go along. Depending on the numbers, we will either provide the cars or provide a bus.

**Mr. Ziembra:** I think cars would be wasteful. I think a bus would be better. We took a bus last time. It is all right. I will be pleased to attend.

12:30 p.m.

**Mr. Chairman:** It is agreed that we will travel on Wednesday. That raises a question. I have the obligation to report on Thursday; I must report the passage of these votes. My suggestion to you is that it would be much easier if at one o'clock we pass all the votes, or vote against them, as is your pleasure, but deal with them at one o'clock and carry those votes for this ministry to be reported back to the House on Thursday.

**Mr. Lupusella:** Mr. Chairman, if I may I would like to raise some questions to the minister as a result of the presentation which was made previously.

**Hon. Mr. Walker:** I might mention as well that some people have mentioned to me that they may have some questions that our time



would not permit to be answered. I am prepared to entertain the questions and, if I cannot give the answer quickly, to provide written answers to all the questions that may be raised. If you wish, we could even table them in the House if that is useful.

**Mr. Lupusella:** It is a short question; I am sure that you have an answer.

**Mr. Chairman:** It is with Mr. Bradley's permission. The normal protocol is to allow the official opposition critic to lead off.

**Mr. Lupusella:** Going back to the point of the industrial basis, if I may use this expression by which you are preparing the inmates for their rehabilitation, one instant question is, is the equipment rented or acquired by the ministry to produce things like the markers or other products which have been manufactured?

**Hon. Mr. Walker:** That is a difficult question to answer because it depends on the individual institution. In some cases it is rented equipment. In some cases we own the equipment, for instance, the licence-marker-making plant. We own all the equipment in that. If we are talking about the muffler plant, that is provided, I believe, by the manufacturer of the muffler parts. In other places we would rent some equipment. It depends specifically what you are talking about.

If it is a farming operation we would no doubt own the equipment. It is a mixture of owned and leased equipment.

**Mr. Lupusella:** Can you give me the answers, in relation to all the institutions, as to what is rented, what are the names of the companies and what is owned by the ministry?

**Hon. Mr. Walker:** I can provide that.

**Mr. Bradley:** I will attempt to divide the time that remains equally in terms of making a few comments. One thing we can say about the field of correctional services—I think Mr. Ziemba would likely agree with me in this regard—is that the ministry appears to have been listening to the two opposition critics over the past few years because many of the changes that we have advocated in the initial stages have come about. It is a matter of commending the ministry and the minister for putting these changes into effect, particularly with the emphasis on keeping as many people as possible out of jail.

We all know the North American record as compared to the European record of institutionalizing people in the field of correc-

tional services. In that regard, I think we are all pleased these programs have been undertaken, to never commit people to jail in the first place if it's a very petty offence or, if they are committed to one of our institutions, to be able to come out on a temporary absence program to take advantage of resources within the community.

You have gone through the programs. I needn't be repetitive because we have discussed them with the previous minister, Mr. Drea, and since since you have been the minister.

One of the concerns we have is over employment of these people. I am happy to see there is a renewed emphasis on finding jobs for people when they leave the institutions, but now even on the basis of those who are on remand. The minister perhaps best drew attention to it through that famous newspaper article, but I think we all recognize there are a number of people within institutions who perhaps do not have to be there but the alternatives to the judges were not there.

I think the pre-trial programs you have instituted—you have the four experimental ones to be expanded, of course—and the consultation and counselling that goes on at this time is very critical. We would certainly support the expansion of that program.

Something else that comes to mind is that on many occasions we run into the old argument of spending to prevent people from ending up in institutions as opposed to spending after they are in the institutions. I am wondering—and perhaps we can get that comment later on—what consultation the minister has, for instance, with the Ministry of Community and Social Services and other government ministries where preventive spending can take place. In many cases you get the end product of lack of adequate programs in certain areas.

I am not saying the government can solve all the problems of this world. It can't. There are areas where I am sure some of the government members themselves, and certainly opposition members, point out a need for expenditures or programs which could result in these individuals not ending up in your institutions. I wonder about the kind of consultation you have there and the lobbying, if I can use that word, that you might make with them.

You tend to diagnose a lot of problems. I am sure that officials within your ministry can look at the people who end up in institutions and say: "These are the problems



these people are encountering. How could we have prevented these problems from occurring?" Your immediate concern and responsibility is to attempt to respond to these problems by bringing about programs to deal with them on a remedial basis, but there must be things that jump out at the members of your ministry right away that say: "Here's a consistent pattern of problems that have existed with these people. What can we do?"

The obvious one that comes to my mind, being a teacher, is programs in terms of remedial teaching, in terms of those who have specific problems with education, people who perhaps need to have their problems isolated and dealt with in terms of special education. You people could probably see that best because I think, in our tours of institutions in the past, one of the things that was immediately apparent is that for the most part people who are in these institutions are people who have not been able to compete in our society because they have not had the tools to compete, have not had the education to compete. We look for preventive programs to ensure that this does not happen.

I realize this isn't specifically within the purview of your ministry, but I think you could provide a lot of valuable information to the others.

There is a great emphasis on work. The minister cannot lose on this one because he appeals first of all to the people who think one should flog all inmates in public, the people who hate all inmates and figure they are evil and bad forever. You appeal to that group with work. They say: "That Walker is doing a great job. He's going to make these people work for their living and I'm going to pay less in the way of taxes." You appeal to those people.

At the same time you know you are going to get the acquiescence of the opposition critics who feel there is some value, depending on the work you have these people doing, in having these people, first of all, outside the institutions and, if they are inside, doing things that are constructive and useful. We are not just saying menial jobs, although menial jobs have to be done.

There is a certain amount of responsibility taught, I suppose, particularly as they acquire skills and learn how to work with others, even the skills of working in a work place. You talk about the work ethic. I will talk about working in a work place. That's valuable, and so you have on your side with this work program both those who feel it is punitive and those who feel it is very useful

to the inmate himself. I guess you are to be commended on that political trickery, or whatever it is.

**Mr. Williams:** It is just common good sense.

**Mr. Bradley:** Your fellow member says it's common good sense, and some might concede that. Of course, I don't like conceding anything to the minister in public.

We also look at reinventing the wheel. I would love to have Syl Apps' speeches on why the institutions should get out of farming. Bob Nixon said to me, "Why don't you get some of those old speeches of Syl Apps?" Apparently there was quite an extensive program at one time. Syl Apps explained why they were getting out of farming; Bob Nixon said the speeches would be interesting to have.

I had another person who was looking in some history books about the county of Lincoln, or something, and who talked about people working on farms. I don't even have to open up the Globe and Mail. I look at the cover of the Globe and Mail and we have a large story on how you are going to put these people back into agriculture as though it were something innovative, and the minister is given all that credit.

12:40 p.m.

I guess we have to accept the fact that you are the minister and you are news when you speak. There may be some value in that. It is probably a case of necessity being the mother of invention. Prices have gone up. It now becomes valuable in terms of producing that kind of thing for your institutions.

It may be useful as well. There are many within the agricultural community who say it is difficult to get people to work in agriculture any more. Some of them do not have the skills; some of them do not have the experience. Yet some of these people who may be gaining that experience might well have useful, constructive and relatively well paying jobs in agriculture. So there is a good spinoff to that.

You mentioned saving money on energy. I would be interested in knowing what specific reduction has been made in the use of oil, since oil seems to be our big problem. I am looking at the conversion to natural gas, and other projects such as windmills and things of that nature.

What specific projects of that kind have you undertaken to eliminate the use of oil? We recognize that you are going to reduce your energy requirements, but we have to look at the oil requirements.

There is one thing I brought up in the House that I should touch on—by the way, I think that a lot of the value of these estimates can be seen when we actually visit an institution; although the minister will recall that the last two institutions Mr. Ziemba and I have visited have had riots and escapes within weeks after our visits. Of course, the minister was there as well, so no party can claim credit for that.

The thing I wanted to touch on was that case that happened early in April of this year in—I called it “Original” instead of L’Original; the minister corrected my French. Judge Patrick White of Ottawa said he wanted to give two young people a sense of what jail was like, so he sentenced them to a couple of days in jail to show them how bad it was.

The lesson, if you want to call it that, was indeed that jail was not very pleasant because both of them ended up being badly beaten in the jail.

I am concerned that the minister, who is also the Provincial Secretary for Justice, through the Attorney General (Mr. McMurry) emphasize to judges that while jail may be one alternative they have, it is not really wise to send kids to jail to find out what jail is like on a firsthand basis through a beating of this kind. I hope the minister will make those representations to the correct authorities.

I would like to touch on another area, and that is the strike that took place in the Ministry of Correctional Services. If there is one area in which I could be critical of the provincial government and the minister, I think it was in this field. I recognize that you have said you are prepared to go to arbitration, and I think you are to be commended for that, but I thought it was a strike that did not have to occur.

Ultimately the request of the Ontario Public Service Employees Union for a separate bargaining unit was, by and large, agreed to. I think those of us in opposition made the point at that time that it seemed to be a very reasonable request. We recognize that OPSEU is still going to come in down the line looking for further categories. It is the union’s prerogative to do that.

I felt that strike need not have occurred; that the request of the employees was reasonable and could have been complied with without going through the show that we had between you and the Attorney General. I guess the Attorney General stole the headlines on that one with his talk about prosecuting Mr. O’Flynn and so on. Mr. O’Flynn

spent some time in jail as a result of what happened.

I do not sit here condoning an illegal strike. I think the minister is well aware of that. I just thought it might have been possible to agree to a reasonable request to avoid this particular strike. I hope in the future that there will be consultations between the union and management to try to overcome problems of that nature before we go to a major confrontation.

I think you know, as the minister—certainly your officials know—that the individuals who work for your ministry were very reluctant to go out. I am sure many of them, for a variety of reasons, some for moral or ethical reasons, and others for financial reasons or fear of punishment, were reluctant to go out on strike.

I promised Mr. Ziemba I would leave 15 minutes for him. We have other questions that will arise, no doubt, on the visit to Burtch Correctional Centre, which I think will be useful. I should mention to members of the committee who are not the critics that the policy of the ministry has been an open door policy. We have access to your employees, at the senior level certainly, and so we are able to obtain the information we look for.

Mr. Minister, other questions we have, because of limitations of time, I will put in writing to you. You have given an undertaking to this committee that you will provide the answers, either through tabling in the House or through direct answers to the opposition critics or any others who might be interested in them.

I should mention another thing I might be interested in just before I do leave it, and that is the reaction of your inmates at the Maplehurst complex to the television program they went on. I am interested to know the effect of having media access to that institution.

What effect did it have? I know some would say it resulted in an altercation later on, a riot. I do not know if you could attribute it to that, but I would be interested to know what the result was; what your employees saw the effect was on the inmates of having the television programming going on, the series of programs at the institution.

**Hon. Mr. Walker:** I would just mention, since you were on the show two nights ago I checked with Maplehurst in the last two days and there has been relative calm there ever since. We are not anticipating any difficulty.

**Mr. Bradley:** That is very good. The final comment I have is that as a teacher I recognize the factor of declining enrolment, as a result of young people being around. I also anticipate that you should see declining enrolment in your institutions, if the economic climate improves, as a result of the fact that young people will not be going into your prison system at the same rate as before.

**Mr. Chairman:** I am going to ask Mr. Ziembra to make his comments and then the minister will reply to both critics.

**Mr. Ziembra:** I do not want you to take this personally, Mr. Minister, but your ministry is a complete washout.

**Hon. Mr. Walker:** Other than that there is no problem that you see?

**Mr. Ziembra:** Absolutely no corrections are taking place in the Ministry of Correctional Services. If anything, it is just the opposite. Society plays a sick joke on itself by thinking that if they send someone to a jail somewhere, that person will be rehabilitated. In fact, the prisons we have breed crime and prisoners return again and again to the same prisons.

No study I have seen indicates there is a reduction of crime because prisoners serve their sentences. In fact, it is just the opposite. There are plenty of studies that indicate crime increases because imprisonment contributes to crime.

I do not know what the latest recidivism rates are. They are probably around 80 per cent. If there were any other government program that had an 80 per cent failure, say the Ontario Health Insurance Plan, if 80 per cent of the people who went through our medicare system died, the government would abandon it tomorrow. Here we have a ministry with all these able-bodied people; it has an 80 per cent failure rate; and everyone carries on as if everything is fine.

We have the graphs of saving a buck here and a buck there. We can have people doing some of their own work—I do not know, I think the whole thing is misleading. Even some of the statements we have had here were misleading. While there may be a saving in the operational part of your ministry, you cannot build these new jails fast enough. They are not cheap. It costs \$12 million to put up a 200-bed jail. The minute the thing is built, you have it filled to double its capacity and you need another one.

The more I am a critic of this ministry, the more discouraged I become. Here are the figures.

**Hon. Mr. Walker:** But you know, however, that the inmate populations today is identical to what it was in 1969.

**Mr. Ziembra:** Isn't that a shame? Five per cent of those inmates should be there, the other 95 per cent should not. Five per cent of them are guilty of assault, robbery or rape, crimes against the person, violent crimes. The other 95 per cent are there because of property crimes, traffic violations, family disputes, liquor and drug offences.

**12:50 p.m.**

There are people in the Don Jail right now serving time for not paying a traffic fine. In this day and age, you have people in debtors' prison. More and more poor kids are in jail. I would say the majority of those people we saw on the screen today are children of the poor. The poor are overly represented in our prison system, as well as the native Canadians.

I have so much I want to say. I am just going to be very brief and very negative today.

**Mr. Bradley:** That is not like you.

**Mr. Ziembra:** I know it isn't. I do recognize that you have come out with some restitution programs and alternatives to imprisonment, and I am grateful to you for that. It has resulted in a 10 per cent reduction in the prison population, according to your statement a few minutes ago, but the remands are a real problem. Those people who are there on short sentences are causing overcrowding. This headline comes back: "Seventeen Thousand Jailed Needlessly in Ontario." I would like to talk to you about that for a minute.

Also, before I forget, when this constitution debate comes up I would like you, as our minister, to make representation to the federal government. It has bungled its prison system. It really has. I would like you to make representation on behalf of Ontario that under the new constitution we take over prisons to get away from those fortresses they have built which cause so much alienation and which create a subculture of very dangerous men who are released in our society.

Talk about society playing a sick joke on itself; they think when somebody goes to jail that is the end of it. No. That person comes out in less than two years. He is back on the street and he is back in our neighbourhoods.

I should talk about group homes and North York's attitude to group homes. First of all, you, Mr. Minister, have made quite a name for yourself, for the short time you have



been here, with your workfare programs, welfare recipients, single mothers and widows and orphans, going out and doing all this work in the community. I remember the headlines. You have extended that into this ministry. That is the sense people have out there. You are getting those prisoners to pay their debt to society.

Then you came out the other day with the remark that you are all in favour of capital punishment. Let me tell you who is in favour of capital punishment. If you talked to a lot of the prisoners, you would find they are in favour of capital punishment. That is their feeling.

In my opinion, those who do not have the capital are the ones who end up being punished. Is that not the way it is?

It is a goddam shame that you would take that position when you could be providing some leadership. I have talked to prisoners and they are all for stringing somebody up—not themselves of course, but the guy in the next cell. Let's get away from that kind of nonsense.

Putting prisoners to work is good if it is meaningful work, if there is an educational aspect or if a person comes out with some idea of self worth, but not of it is work as punishment, not if it is work for the sake of work.

It reminds me of the problems my dad had when he came to Canada right in the middle of the Depression, 1929. There was no work in those days. If you had work, you were lucky to get 10 cents an hour. Instead of welfare, they had relief.

They had a kind of workfare in those days too. They had able-bodied men, and you cannot give them relief. You would have them digging holes. The men did not know why they were digging holes; they thought it was sewer construction or something. They would dig this hole, and go home tired out after doing all this work, and somebody else, my dad would find out, perhaps his neighbour, was filling the hole in.

We do not want that kind of work, Mr. Minister. I do not want you to promote the idea that you are punishing someone by making him work. If there is work, let it be meaningful. Let some good come out of it. It is not to be seen as punitive. I am bitterly opposed to your attitude. People come out of these prisons after a short time, if you abuse them in that way, filled with bitterness and rage. They are going to lash out at the society that treated them in that way.

You have scored a lot of headlines here: "Minister Promises Severe Penalties to

Guelph Rioters"; "Probationers to be Put to Work." Why the hell don't you find them regular jobs instead of putting them to work just to get them off welfare? "Jailbirds to Reduce Food Costs."

Here's another thing. This party has been in government for 37 years and just now you have discovered that these guys are sitting around and rotting in jail and you want to put them to work. Why didn't you do something before this? Why have they been lying around in cells? Why weren't they put to work, as Mr. Bradley asked before this time, out growing crops and all the rest of it? You keep reinventing the wheel and patting yourself on the back for it.

I would like to say a few nice things today, Mr. Chairman.

Mr. Chairman: Very briefly, because there are six minutes left and we would like to give the minister a chance to reply.

Mr. Ziemba: We have a number of people, and perhaps I am one of them, who are committed to and feel for prisoners. I guess I could be labelled a bleeding heart. I think prisoners are victims, in a sense, as well.

You talk about programs for victims. These men in jail are also victims of our society. The people who dedicate their lives to helping prisoners, like the Elizabeth Fry Society, the John Howard Society, the Salvation Army, the St. Leonard's Society of Canada and the Quakers, deserve a pat on the back. I am the first to acknowledge the good work they do.

Also, there is Dr. Ruth Morris. I don't know how she got inside the system. She is a Quaker who fought you and your predecessors, foot, fang and claw. All of a sudden she is inside the system. She is doing good work, but you are not giving her the tools. She and her staff are having difficulty getting into these lockups.

The police are very jealous of their lockups. They say, "No, you can't come in here and disturb police activities." As MPPs, we have a right to go into jails and institutions, but we can't go into police lockups where some of the greatest problems and many of the suicides take place.

I want you to promise us that before this session ends you will give Dr. Morris and her staff carte blanche to walk into any lockup they want to and not have some smart aleck desk sergeant block their way. This is important if that program is to succeed and if these 17,000 needlessly jailed prisoners are to be released.



Here's another headline: "Walker's Remarks Rile McMurtry." I really enjoyed that debate between the two of you.

**Mr. Roy:** I put my money on McMurtry.

**Mr. Ziembra:** "Court Delay, Defence Chief Cause." The lawyers are blamed: "... Chief Cause." "Lawyers Protest." They always protest. "Some Truth to Trial-Delay Claims, Says Local Judge." He is coming down the middle.

I don't have much time left, Mr. Chairman.

**Mr. Chairman:** I don't believe you have any time left, Mr. Ziembra.

**Mr. Ziembra:** Well, I guess you have heard enough.

Interjection.

**Mr. Ziembra:** This place is getting too authoritarian.

What about these teachers you had? Practically the only good thing you had in that prison system were these teachers under the Provincial Schools Authority. You just cut back on them, got rid of them, and replaced teachers with guards. The average prisoner with a grade five education could leave there with the ability to fill out a job application. Now he's not even being given that opportunity because of the cutbacks in prisons.

I would like your comments about these wiretaps in the Don Jail. It bugs me. You are the landlord. How does this go on without your permission?

Is there an interruption here?

**Mr. Chairman:** Yes, I believe Mr. Roy wanted to comment.

**Mr. Ziembra:** I want an answer to that before too long. You can't have wiretaps when lawyers or visitors are visiting prisoners. Everyone has a right to privacy.

Why are you allowing dirty conditions in the Windsor Jail? Why can't that be a work project? Let them clean the place up. This panel that goes around described the conditions as dirty: "The floors and walls were dirty and badly needed to be painted." The Sandwich West police station was also described as "very deplorable." That's awful.

Here is another one: "The garbage disposal system at the Rideau correctional centre represented a continuing problem, according to the panel, primarily because of an archaic approach." Smarten up those people. If you want them to work, what you can do is have them clean up after themselves. That's meaningful work.

I am an abolitionist, Mr. Chairman. I guess I won't be satisfied until every one of these jails—lock, bar and keyhole—is bulldozed into the ground and offenders who commit a crime are returned to the community from

which they came. That is where they eventually will return.

The city of North York should be condemned by this committee for refusing to have ex-offenders live in group homes there. I would like you to find out how many prisoners come from North York and then present Mayor Mel Lastman with that figure. Ask him, "Who the hell is going to look after your offenders if you are not going to?" Just tell him he can't send them to my riding. We are prepared to look after our offenders, and he should be prepared to look after his.

**Mr. Williams:** Mr. Chairman, I have a point of order. I thought you were going to allow the minister to comment before we adjourn.

**Mr. Ziembra:** I am prepared to adjourn, Mr. Chairman. I was just getting wound up, but I am prepared to adjourn.

**Mr. Chairman:** Just for the record, if my understanding is correct—and I may be wrong—it was the mayor of North York, not the council of North York, that passed that remark.

**Mr. Ziembra:** I said Mayor Lastman, did I not?

**Mr. Chairman:** No, you said the city of North York should be censured. I believe it was the mayor and not the council. I may be wrong on that.

**Mr. Ziembra:** If he can prove to us that there are no prisoners coming out of North York—

**Mr. Chairman:** Thank you. We have corrected the record.

We did agree that we would carry the vote at one o'clock, I believe. Would members like some additional time for the minister to reply? He has offered to supply a written response to each of the questions. What is your pleasure? Would you prefer a written response that could go into some detail on the questions that have been raised?

Agreed.

Votes 1601 to 1603, inclusive, agreed to.

**Mr. Chairman:** This completes the estimates of the Ministry of Correctional Services.

We will meet on Wednesday morning in front of the Legislative Building on the south side for our tour of Burch Correctional Centre and you will receive a notice as to the time.

**Hon. Mr. Walker:** Mr. Chairman, just before you wrap up, I can advise the committee that we will be leaving here at 10

o'clock in the morning. We will provide lunch at the institution, and return when you see fit, at two o'clock or whenever is appropriate. I also have some maple syrup for you.

**Mr. Chairman:** Yes, when are we going to get that?

**Hon. Mr. Walker:** Right now.

The committee adjourned at 1:04 p.m.

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No. J-15

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations



**Fourth Session, 31st Parliament**

Friday, June 6, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, JUNE 6, 1980

The committee met at 11:42 a.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

The Acting Chairman (Mr. Lawlor): I have before me immediately a motion by the member for Kitchener (Mr. Breithaupt).

Mr. Breithaupt: Mr. Chairman, It has been the custom over several years to attempt to divide the hours available for the estimates of this ministry into a sequence which would allow members to be present on days during which items in which they were interested were being discussed. Secondly, it was done to accommodate, it was hoped, the senior members of the ministry staff who would be able to make plans for their responsibilities.

The Acting Chairman: Mr. Breithaupt moves that the time available for the estimates of the Ministry of Consumer and Commercial Relations be divided as follows: Friday, June 6, from 11 a.m. to 1 p.m. and Wednesday, June 11, from 10 a.m. to 1 p.m., to deal with vote 1501, ministry administration; Thursday, June 12, from 3 p.m. to 6 p.m. and Friday, June 13, from 11 a.m. to 1 p.m. to deal with vote 1502, commercial standards; Wednesday, June 18, from 10 a.m. to 1 p.m. to deal with vote 1502, particularly consumer pricing matters; Thursday, June 19, from 3 p.m. to 6 p.m. to deal with vote 1503, technical standards, including the topic of aluminum wiring.

Mr. Breithaupt: This would be a maximum of 14 hours, but more likely 12 or 13 in actual total. It would leave at least 11 hours in the fall session to deal with the remaining five votes in the ministry.

This balance is one I would hope members would find acceptable. I have discussed it with Mr. Davison, the critic for the New Democratic Party for this ministry. I believe he finds this division acceptable.

Hon. Mr. Drea: Whatever is the convenience of the committee. On behalf of the staff, there has always been a problem hav-

ing everyone here. I think this is more orderly.

Secondly, if I understand correctly, prior to my time there was concern about some topics getting over-talked, while some important topics never quite got there.

Mr. Chairman, there was a schedule last year which I thought worked very well. Whatever is the convenience of the committee is fine.

The Acting Chairman: The chairman's only comment is it is really regrettable, almost heartbreaking, that while The Tin Drum is beating out the tune, we will not be dancing to the tune. It will be a dead issue by next fall. So be it.

Is this the wish of the committee? I thought you were burning away, Mr. Davison.

Mr. M. N. Davison: We are supporting this division of time only because we are totally convinced that by next fall there will be a new tin drum, as it were.

The Acting Chairman: Have you an opening statement?

Hon. Mr. Drea: I do not have an opening statement. You have a question on the Order Paper concerning aluminum wire, do you want to handle that via the Order Paper or would you prefer to have it in here?

Mr. Breithaupt: I would think if you have the information, it could be discussed on Thursday, June 19 and we can discharge it from the Order Paper. Of course when the question was placed, it was uncertain just how far we would be proceeding on the basis of what time might still be needed for other bills.

Hon. Mr. Drea: The one problem is collecting data from a couple of other ministries. It might take that full question beyond June 19. Would you like me to provide it for you as early as possible?

Mr. Breithaupt: I will leave it with you; if it can be provided that will be fine.

Hon. Mr. Drea: I can provide you with my own.

**Mr. Breithaupt:** Yes. That is fine.

**Hon. Mr. Drea:** Okay.

**The Acting Chairman:** Has the critic for the Liberal Party an opening statement?

**Hon. Mr. Drea:** I was going to open.

**The Acting Chairman:** Oh, you were going to.

**Mr. Breithaupt:** I think the minister has some comments, Mr. Chairman. I presume that the motion is acceptable to the standing committee on justice so that we can have a clear division of our times.

**The Acting Chairman:** Is it accepted?

Motion agreed to.

**Hon. Mr. Drea:** Those of the staff who have other work to do can proceed to do it.

I do not really have a statement. I want to bring the committee up to date and share some information on certain things because I know sometimes in the past these have come up. They head into the criminal courts and we get into the limbo situation of sub judice and so forth.

The one thing that continues to concern not only myself but every consumer minister in the country, as well as the interregnum federal Minister of Consumer and Corporate Affairs, Mr. Lawrence, and the present one, Mr. Ouellet, is the odometer situation. The odometer situation, notwithstanding the vast number of charges, is not improving if you take it on a coast-to-coast basis.

At the federal-provincial consumers ministers' conference in Newfoundland last fall, Mr. Lawrence brought down key people of his staff and they labelled this the number one consumer fraud, the number one consumer problem in all of Canada. The particular scam of spinning, or what is known in the trade as "weight watching," is the prime example of unscrupulous people responding to a particular economic climate. The price of new cars has risen 60 per cent in the last two years. This, in combination with some people's dislike of catalytic converters, has boosted the market for used cars. The dislike for the catalytic converters is because of the astronomical increase in the price of gasoline since they were first brought in.

This has boosted the market for used cars, not just in Canada, but all around the world. Buyers want low mileage cars so that is what the vendors give them; at least it's low on the odometer.

Prior to 1979, we investigated incidents of odometer tampering that came to our

attention and laid charges. In February 1979 we found ourselves in an investigation that just grew and grew and made us realize there was a serious problem in the marketplace that had to be addressed.

The potential loss to consumers is huge. A spun odometer will add \$2,000 to the retail price of a used car. The charges we have laid in this province alone relate to over 2,000 cars which had been turned back an average of 30,000 miles each for a total of over six million miles. The loss to the consumers who purchased them may be conservatively estimated at over \$2 million, just on the charges that either have been disposed of in the courts or are pending.

11:50 a.m.

Many local police forces, as well as the Royal Canadian Mounted Police and the Ontario Provincial Police are becoming increasingly involved in this investigation. This is another concern of mine. The resources of the police departments are being very seriously affected by this. The auto squads of the police departments, whether it is the regional one of yours, Mr. Davison, of Hamilton-Wentworth, or the auto squads of the OPP or the auto squads of the RCMP, should be dealing with stolen cars, with tampering, with all kinds of things. Yet, to try even to keep control on odometer spinning, those resources are put into that. This is a serious matter for the taxpayer who may never buy a used car at all. In the next couple of years he is going to have to face increased police budgets.

The police forces are very enthusiastic about this total co-operation among all levels, including the civil branch. As a matter of fact, they had a testimonial dinner for the people who have been involved in Cornwall.

The three statutes under which we lay charges are the Motor Vehicle Dealers Act—provided of course that it is a motor vehicle dealer—the federal Weights and Measures Act and the Criminal Code of Canada. On the convictions so far, penalties have ranged from jail sentences to fines of over \$2,000. In addition, restitution has been ordered as a term of probation in some instances. One convicted dealer repaid over \$9,000 to a number of victims who bought overpriced used cars as a result of odometer spins.

The particularly vicious part of this is that even when a person finds out he has purchased a vehicle with a spun odometer and goes to resell it, he has to tell the true mileage. These buyers were defrauded



at the first end by paying more than the vehicle was worth, and at the second end by having to notify the world that it has a spun odometer. They take an additional loss. It works at both ends—one of the few types of fraud that really hits one on both counts.

The courts have been even tougher than anybody had anticipated. In one case the man charged had a lot of problems, including marital difficulties, and finally was on social assistance. He would have been happy with a conditional discharge but the judge wanted a pre-sentence report. The report showed that before he went on social assistance the man had put \$14,000 of his funds from car sales into his mortgage. As a result, the judge sentenced him to six months in jail or a fine of \$1,000. Our people are out in the marketplace all the time and the weight watchers or the spinners know this. Incidentally, I would be less than candid if I did not say that the public is also using weight watchers. The leased personal car which now accounts for a tremendous share of the market is going to account for even more in the future. For \$35 and an appointment that lasts 30 minutes in many underground garages of commercial or apartment buildings—particularly office buildings in mid-town Toronto—because of the conditions on those leases, which usually are 70,000 kilometres, the old 42,000 miles—

**Mr. Breithaupt:** If you are over.

**Hon. Mr. Drea:** That is right. You start paying suddenly. Most leased cars are coming back after three years not even close to the maximum. They are coming back with around 50,000 to 60,000 kilometres. Everyone is highly suspicious but what can the leasing company do?

In turn that puts another burden on the honest customer because the leasing company will eventually figure that everyone is spinning. It is going to be a loss when they go to merchandise it as a used car, so one is going to have to pay more for one's lease.

We have been using—and bear in mind that we always use reasonable cause—electronic surveillance, body packs and a number of techniques in looking at odometer spinning. We have a very interesting tape that indicates we may be producing at least a limbo in the situation. We went into a suspected dealership with a body pack and asked the dealer if he was doing spinning. He said, no, he was not really doing anything, and that he should not be talking

to anybody because there were too many investigators around.

The difficulty is the investigations now are becoming more complex and more expensive because the easy spinners are out of the trade. The hard core ones are still in. They are taking the utmost precautions, et cetera.

One of the interesting things in connection with this is the Japanese government now has people in Canada. There are now more used cars sold in Japan than new cars. They are having trouble with weight watchers or odometer spinners in Japan. They want to find out from the federal government and ourselves what we are doing about it. Obviously there are all kinds of things going on in the United States and so forth.

In terms of legislation, bear in mind that we thought some years ago, when the federal government made it an offence for anyone to tamper with an odometer, that this would end the problem. It has not.

Realistically, I think the answer is that we are going to have virtual cross-Canada pedigrees on automobiles. It will have to be something on the basis of every time the car is sold, resold, transferred or leased there will be a mileage accountability put on it.

I have two other points. Starting in 1974 or 1975 with the introduction of the Travel Industry Act, there was some new ground broken and that ground was that there would be a Compensation for Victims of Crime Act, a compensation procedure whereby the victim would not have to go to court, would not have to wait for the forfeiture of bond to go to a compensation fund. The two major compensation funds in the province at the moment are the travel industry's and the Housing and Urban Development Association of Canada new home warranty program.

The new home warranty program was the first excursion on a major scale into self-regulation under the umbrella of government supervision. I would like to bring you up to date on how the consumer has benefited from these remedies.

There are essentially two aspects to the protection under the HUDAC home warranty program. First, deposits are protected. In the past the home buyer deposited several thousand dollars on a new house only to find the builder had gone bankrupt and stood to lose the entire amount. Since the passage of the home warranty act nearly \$4.5 million has been paid out by the program to home buyers who otherwise would have lost large sums.

The second thrust of the program is the warranty. As you know the home buyer has a one-year warranty on materials and workmanship and a five-year warranty on major structural defects. The statistics tell the story of huge consumer losses avoided. Over \$3 million has been paid for claims. That brings it to about \$7.5 million which has been paid out directly to consumers.

Incidentally, on the one-year warranty the dollar figure does not include the remedial work done voluntarily by the builder, but only where the builder has defaulted or refuses to do it and where there was an actual claim and a cost met. Perhaps later on in these estimates there might be some other questions about that.

The Travel Industry Act is a compensation fund that consists of contributions of practitioners in the field, both the retailers and the package tour wholesalers. In the beginning with that act there was a lot of concern by the industry about what would happen to the integrity of the fund and the financial responsibility of registrants. There was almost a feeling that the setting up of a compensation fund would, if not encourage people to take the easy way out, certainly remove one of the traditional impediments to just throwing up one's hands and saying, "Well, let somebody else solve it." That really has not happened.

Last year the industry made a recommendation to the board of trustees of the fund that they consider using moneys from the interest accumulated to increase audit inspection of registrants. The measure was approved and a firm of chartered accountants was hired by the board for a period of one year to do audit inspections with a view to preventive action. The cost for the program would be \$100,000.

#### 12 noon

The inspections started in September 1979. Until April 30, 1980, 430 audits were made. These are random inspections done on both agents and wholesalers. Inspections also are done where the registrar has learned there are indications a firm might be in trouble. All new registrants are inspected in their third month of operation, again in their sixth month, then again in the 10th or 11th month. So there are at least three inspections during the first year, and that information is provided to the registrar so he can ascertain if a new registrant is establishing the proper bookkeeping, following good business practices and so forth.

The registrar, after the audit report, often calls on the registrant of a new business to

give advice. We are getting to the point where we can ascertain at a very early stage that a firm may be in difficulty. While you get your money back on a defaulted trip you do not get the trip, and quite often it is too late. You have the cash, but with all the requirements—many of which are artificial—about paying at least 30 days in advance, or trying to get a booking at a peak time of the year when they are all sold, quite often you have the money back in the bank, which is very good, but you also have the frustration of not getting your trip.

We started this audit procedure because the fund is in such good shape. That \$100,000 came from the fund. Bear in mind that this year the established agents, both wholesale and retail, will not contribute to the fund. There is enough money in there. The newcomers, of course, in fairness will pay their contribution.

I think, in looking back five years, that fund has done what it was supposed to do. There were no bones made about it, it was to protect the customer monetarily in the days when the planes did not come or the hotel was not there. But now, with that stability there, the interest on the fund is being used to improve the quality of the service. We can ascertain that a firm may be in financial trouble long before the trips that it has booked are due to take place. If the person is going to go out of business on a bankruptcy basis, the trip or some alternative can be provided, plus no additional moneys coming into the firm that are used as a temporary cash flow, which keeps the burden down on the travel industry compensation fund.

Mr. Chairman, I have a number of other things that I hope will be raised—some of the special projects like the work for the retarded and the outgoing, long-term psychiatric patient in terms of consumer skill programs in general, plus some of the experiences we have had in getting into complicated fields and explaining them for the benefit of the ethnic press and the ethnic community. There are also some of our children's programs I would hope might be discussed under the appropriate vote. But I will terminate my remarks at this particular time.

**Mr. Breithaupt:** First of all, if I may just follow up with respect to the announcement that the minister made this morning and the introduction of the Registered Insurance Brokers Act in the House: I do not, in any way, wish to comment on the contents of the act or on any of the details, which will

take some time to sort out, but I would like to follow up the statement of the minister and ask him something about the mechanics of the completion of the bill.

There are just nine more days in this session. By next week, I presume, the bill will be printed and available for distribution. But that would just leave a day or so. Even if this was on the government House leader's list of things he had to have, there are some 18 other bills on the Order Paper ahead of this one. I presume that a second reading debate would take some time, particularly since this will be really a milestone bill that is going to form the framework for real estate agents and other groups.

Could you tell us what your plans are for the legislation? I would presume, at this point, recognizing the tremendous time and commitment that has been put in by a great number of people to try to get the best bill possible, that the bill would likely sit on the Order Paper and perhaps have to be dealt with when we return in the fall. If that is the case, is there a problem with respect to the licensing year for agents, which, as I recall, is October 1? Could you just tell us what your plans are? It is most important that the agents and brokers, and indeed the public as well, know when they can expect to have this in place as a piece of legislation, which I believe we all will welcome.

**Hon. Mr. Drea:** First of all, imposing as the bill may look I think you will find, upon examination, that it is basically enabling legislation for the rather obvious reasons that if we are going to have self regulation we want the bulk of the regulation in the bylaws of the organization. At that point it is self regulation, because even with regulations the procedure obviously has to be that you go through the minister, through cabinet. So basically the bulk of the legislation is enabling. Mind you, it does obviously set up the standards for the council and so on.

I would hope that having examined the bill you would find that it does not need the dotting of the "i's" and crossing of the "t's"; that the bill would not require the ordinary strenuous examination of one with a lot of minute detail in it.

Secondly, one of the reasons it took until today to introduce was the fact that, commencing in March or early April, the agents and brokers—because they still do exist, although they have come into the one organization—undertook to take this bill across the province to make it available in draft form—

their draft form, not mine—to every agent, every broker and to the entire insurance industry, not on the basis of a mailing but on the basis of seminars and dialogue. So the bill has undergone enormous scrutiny from the people who are affected by it in the business sense, and also by various public body groups such as the consumers' associations, et cetera.

There have also been meetings on a much more formal basis with Mr. Thompson, the executive director of our financial institutions division, and of course the rest of the insurance industry, because there is a very fundamental cleavage. There is no question that insurance companies are losing a great deal of the traditional control they had over their agents.

At the same time, we have pointed out to the insurance industry that it cannot have it both ways: this legislation and the protection package that is involved in the Registered Insurance Brokers of Ontario—the combination of equity participation on deposit, the mandatory errors and omissions insurance and the other types of protections. If a mistake is made, the company no longer is automatically liable for all of it on the grounds that the agent, who supposedly knew all about insurance, did not have errors and omissions coverage. Indeed, they are being relieved of many responsibilities that, de facto, they must accept today. They have been consulted.

Certainly from the beginning of this—I think we have to bear in mind that this was really bare roots legislation; there is no pattern for it, except in the appeal procedure, perhaps—in the gut or the core of it, there have been many obstacles that were not foreseen.

12:10 p.m.

The book that they presented was very thick. Unravelling government regulation, I will tell you, is even more difficult than any of the professionals around these tables could envisage. It is even more difficult than we thought it would be. It has been brought in as rapidly as possible in a responsible, consultative manner. How the House deals with it I really do not think is the prerogative of the minister. It is there and I think it is up to the parties to choose how to proceed.

The October 1 licensing date does give me concern, there is no doubt about it. I would not like to face the question of a dual licensing for the operational year of 1981. An agent has his licence from the superintendent of insurance, with all the rules of the On-



tario government in it, and then, part way through, the Registered Insurance Brokers Act comes into it. He might very well find himself in a period of licence renewal at a time when a fair number of people renew their insurance, for example, and the question arises whether they are getting the protection under the existing act or the improved protection.

It is going to be the will of the House. I have always abided by the will of the House. I do not like to face great obstacles, but if I have to, I will.

**Mr. Breithaupt:** The government House leader, I presume, knows of your great desire for the legislation to come before us.

**Hon. Mr. Drea:** Yes. Part of the difficulty too, and I should say this in fairness, is that the draftsmanship was somewhat difficult for the legislative counsel. It took a lot longer than anticipated. In fairness to them, they were breaking new ground. There is also the fact that it is not going to be a one-shot piece of legislation. It obviously will be the exemplar for real estate business brokers and for other brokers. Their concern was that the proper draftsmanship be done, so it took longer than anticipated.

I do not want to imply that I am faulting them. I just do not want to leave the impression that this was written this week.

**Mr. Breithaupt:** Oh no, indeed.

**Hon. Mr. Drea:** It has been coming and it has been hard. The first time is always hard. When we face the real estate business brokers it will probably take up one third of the time. So it is really a matter for the House.

**Mr. Breithaupt:** I certainly hope there will be the opportunity to proceed, I guess that will depend on the list of things to do, which neither you nor I will have complete control over by any means.

**Hon. Mr. Drea:** You used to, but you have chosen a more normal course of life. I never had.

**Mr. Breithaupt:** Perhaps I had the illusion of being—

**Hon. Mr. Drea:** I do not think these two gentlemen over here are going to volunteer to be the House leader.

**Mr. Breithaupt:** I would like to spend a few moments talking about the concept of consumer protection in general terms. I think it would be fair to say the principle which guides the present provincial government is that the consumer should be the main policing force in the marketplace with regard to the protection of consumer interests.

The role of government, as perceived by the government, is to provide the consumer the wherewithal to carry out that function. The government, in my view, sees itself as fulfilling this role through the promulgation of various consumer protection statutes and by providing information for the consumer, particularly about their legal rights. During the estimates of this ministry last year we heard of the various efforts made by the ministry in this regard through the distribution of pamphlets, through advertising, through the provision of speakers and so on.

I should also mention, I think in fairness, that the ministry does involve itself in the investigation of suspected fraudulent practices through the business practices division. There has certainly been a long-standing campaign against auto transmission and repair shops. My impression is that this area is one of the biggest single issues that the business practices division handles.

The minister has mentioned in his remarks this morning the matter of odometer changes. That, too, is no doubt a concern, as well. I would imagine, as the new topic that may have come forward in some depth with respect to the rustproofing matters. I hope that we will be able to have a discussion on that topic later on in vote 1502 if there is some information available.

**Hon. Mr. Drea:** We are pursuing that. Perhaps you will want to raise it when Mr. Simpson comes up on that vote.

**Mr. Breithaupt:** Yes, that will be just fine.

**Hon. Mr. Drea:** We are still collecting data on that, and on the sharing with the federal government, because of the standards.

**Mr. Breithaupt:** When we get into vote 1502, that will be just fine.

I do wish to make a comment on the general approach I see the government taking. The idea that the consumer should be the main policing agent of the marketplace only makes sense when allowance is made for three themes.

The first is to recognize the realities of the marketplace; the second is to look at the difficulties inherent in a public information distribution process; and the third is to consider the barriers which prevent consumers from exercising many of their legal rights. I would like to address each of these problems one by one as I see them.

I should also mention that each of these problems often calls for a positive government response. This is so not only because the consumer cannot protect his or her own interests, but because the nature of the marketplace and the nature of our legal



processes are such that it is often not worth his or her while to take action to assert a consumer right.

Let us begin by looking at the realities of the marketplace. The original approach in contract law to resolving a dispute between two parties was the legal maxim, *caveat emptor*—let the buyer beware. It is interesting that in these days we rarely hear that saying raised to the level of a principle any more. This is so because of the conditions of the marketplace having changed over the last several years.

Years ago, when the *caveat emptor* rule was formulated, the buyer and seller were usually on a much more equal footing. But now the consumer is in a far weaker position compared with the seller. There is no ability, often, for the consumer to negotiate either as to the price or to the quality of the goods being sold. The fact that the seller is several stages removed from the manufacturer means that the seller is rarely intimately familiar with the peculiarity of the goods, or the particulars of the manufacturing process that went into producing the goods.

Advertising and market practices are such that little valuable information is relayed to the consumer. With the great diversity of manufacturers and retailers, the consumer stands little chance of becoming better informed, and his or her individual protestations will have little impact on the marketplace as a whole.

The other problem with the marketplace is that at the stage of buying goods or services, the consumer receives very little information about his or her contractual rights, and such rights of which he or she is informed are often non-negotiable. Standard form sales contracts and warranties are often unintelligible to the average consumer, and even when deciphered cannot be changed because that is either store policy, as is often said, or because the contract has been adopted on an industry-wide basis and there is no relief to be had from any particular seller.

Let us look at the second item: the difficulties that hinder the information dissemination programs. This was a matter which was discussed in the estimates last year. At that time, I quoted from a study done under the auspices of the ministry, entitled *Ontario Consumer Issues*, which was released in August 1978.

The survey indicated that most Ontarians cannot name a single consumer protection law; the actual figure was 62 per cent. On

the other side of the ledger, among those who knew something about consumer protection, not one of the laws was well known by a large percentage. Ten per cent of the respondents of the survey could name the protection offered by the cooling-off period. That provision of the Consumer Protection Act received the highest recognition. Let us face it, 10 per cent is an embarrassingly low figure.

I know this matter is the source of concern for the minister as well. Indeed, the whole question as to how to inform the consumer is something which I must commend the minister for having taken as a most serious task, and for having a large and ongoing personal interest in it.

But there is also an argument to be made for a stronger governmental presence in the marketplace, if the government finds it cannot equip the consumer to assert his or her rights.

12:20 p.m.

The third matter I would like to raise is the legal process. I think it is safe to say that most lay persons are ignorant of or intimidated by our legal system; indeed, one can probably safely say that the majority exhibit both of those reactions.

I would suggest, for one thing, that the laws themselves intimidate many people. They certainly confuse just about everyone. I know the member for Lakeshore (Mr. Lawlor) is able to keep current on all of the legislation we have passed, but I long ago legislated myself into ignorance. Not having been in active practice for the past five years, I find it is no longer very much fun when I talk to my fellow members of the Law Society of Upper Canada who are in active practice.

An interesting study would involve reading the following passage from the Consumer Protection Act to 100 innocent bystanders. I quote from section 44(a)(2): "The implied conditions and warranties applying to the sale of goods by virtue of the Sale of Goods Act apply to goods sold by a consumer sale and any written term or acknowledgement, whether part of the contract of sale or not, that purports to negative or vary any of such implied conditions and warranties is void and, if a term of a contract, is severable therefrom and such term or acknowledgement shall not be evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply."

Having read that quotation to these 100 innocent bystanders, one could then ask the

following question: "The preceding passage is one of the most important sections of consumer protection law in Ontario today: True or false?" You and I both know that no one in good conscience could identify "true" as the correct answer, at least not without a translation of parts of the section. Indeed, the act seems to impinge on everyone's constitutional right, as set out in the British North America Act, to at least have the laws of this province printed in English.

In addition to the incomprehensibility of some of the laws, consumers are deterred from seeking redress in our courts for a number of reasons. Litigation can be costly and it is often very inconvenient for the consumer.

If the proverbial widget that costs \$15 breaks down and if the store owner is not willing to replace it, whether or not a guarantee exists, it would appear that the consumer is often out of luck. What can he do? Should he file a suit in small claims court and thus give up a day's work to attend just so he can recover the \$15? Should he wait until he hears of a sufficiently large number of similarly disgruntled consumers so he can organize a class action, only, probably, to have it thrown out of court because we have not reformed our civil procedures to really deal with that theme? It is often just not worth the consumer's while to seek his proper and just remedy.

On the other side of the coin, there is nothing really to deter a seller from breaking the law. If you take section 44(a)(2) of the Consumer Protection Act, which I read earlier, the section guarantees to a consumer the implied warranties of the Sale of Goods Act regardless of whether there is a written disclaimer of such warranties in a contract.

Let us take the average consumer. He buys the widget and with the widget he gets a piece of paper that says something like, "The vendor is not responsible for any defects, either patent or latent, found with respect to this widget." According to the minister's own study, only some four per cent of consumers would know that the disclaimer clause is unenforceable, entirely void, and, indeed, quite illegal.

What penalties does the vendor face if he distributes such a disclaimer clause when he sells the widget? There appear to be none. The worst that can happen is that he would be required to obey the law.

Thus, 96 per cent of the consumers would think they had no remedy if the widget failed the day after they bought it, while the other four per cent, upon pointing out

the illegality of the disclaimer clause, would be told by the seller: "Well, you have caught us. You are right. You do get a guarantee with this widget."

The minister has heard of some of the general problems and has shown a great interest in the field of consumer protection. I think it is important to suggest a few possible simple solutions to some of the problems currently with us.

I suppose one might begin by trying to make the processes of the marketplace more intelligible. Many vendors use standard form contracts. The government could require that these contracts be written in plain English. Indeed, the government could make its own legal resources available to help the private sector, or to encourage or assist in effecting this sort of reform.

One could extend the applicability of penalties for breaches of specific provisions of consumer protection legislation. For example, in a situation where a vendor has attempted to disclaim the guaranteed warranties provided by Ontario's legislation, one could provide that such a clause attract quasi-criminal liability as well as the existing civil remedy.

One could make our consumer protection laws more accessible by consolidating our present scattered pieces of consumer protection legislation into one omnibus consumer protection act. If that were done, the second important thing would be to make sure the legislation is intelligible and readable. If the government is at all committed to bringing in plain language statutes, then surely legislation relating to consumer protection must be a priority area.

One should try to remove the barriers that presently inhibit consumers from asserting their rights through litigation. For example, one could provide for minimum judgement awards. It could be that when a consumer wins an action in court, he or she might be entitled to claim the value of the goods or \$50, whichever is greater. Thus, in the case of the \$15 widget and where a breach of his rights has occurred, the consumer might be more inclined to take the vendor to court because of that bonus. By the same token, a vendor would be more watchful of the consumer's interests and more willing to settle the consumer's complaint with that additional penalty to be considered.

These steps, I suggest, are small, and yet I think they could be meaningful and they could be taken to assist the consumer to protect his or her interests. They are necessary not because the consumer does not wish to

help himself, but because, given the present state of affairs, it is far more rational in many instances for the consumer not to assert his rights. It presently makes more sense to forget about the \$15 widget that fails after a day's use than to research the law and find loopholes in the disclaimer clause, to wade through piles of legalese and go to court. Under our present consumer protection laws, I suggest, in many instances it is economically unsound for a consumer to waste his time trying to assert his legal rights.

Another theme I would like to comment on in my opening remarks is the type of advertising the ministry does with respect to disseminating information to consumers. I refer to aluminum wiring.

As a result of the Wilson inquiry into aluminum wiring, the Aluminum Wiring Resource Centre was set up under the auspices of the Ministry of Consumer and Commercial Relations. Members will recall that recommendation three of the Wilson commission stated, "The existence of this advisory service and the toll-free telephone number should be given extensive publicity."

What sort of publicity was there? When the centre opened in March 1979 the matter received publicity as a news event and got some coverage. Within about a month of the opening, according to information from members of the ministry staff, ads were placed in newspapers in the following localities: North Bay, Timmins, Sudbury, Sault Ste. Marie, Thunder Bay, Sarnia, London, Windsor, Barrie, Orangeville and Owen Sound. These ads were placed only once, and roughly two to three months after the centre was opened no more ads were placed. This is the information about the current state of things that was referred to in a question this past week by my leader, Dr. Smith.

That does not seem to be a satisfactory way to publicize an ongoing service. I recognize that 25,000 copies of the information bulletin have been distributed, and 25,000 seems like a lot of copies of anything, but we have to compare that to the 250,000 homes with aluminum wiring in Ontario, the number given by Mr. Wilson. The information bulletin has been sent to just a fraction of the homes, although, of course, many others may have been covered by the information seen in the press, whether or not an actual bulletin was received.

I am sure the minister will say that a number of homes would already have had some kind of inspection. I think that is quite correct, but there still seems to me to be uncertainty as to the kind of inspection many

of the homes have had. If the inspection was done in anything like the manner in which copies of the information bulletin have been distributed, then to my mind there is some cause for concern, because there does not seem to have been a thorough dealing with the problems which might occur.

12:30 p.m.

As the minister knows, the inspectors who are sent by the Aluminum Wiring Resource Centre do spot checks: They do not check all the receptacles. We have had a case reported to us where a person had his home checked by the centre and six months later a receptacle failed, causing sparks to fly out. Had there been a curtain overhanging the receptacle, or perhaps a bed with covers on it beside the plug, then a fire might have started.

This brings me to the point about the advertisements: They do not seem to tell the real story. I am not suggesting, to use one of the favourite words—apparently one of the trigger words in the Legislature nowadays—that the ads are in any way "misleading." Certainly everything printed in them is true, but some things are omitted.

The advertisement placed by the centre is quite clear. It sets out information. I am sure the minister is well aware of what it says. It says: "Aluminum Wiring. Is your home wired with aluminum? Free information is now available. If an inspection is required, arrangements will be made for an Ontario Hydro inspector to check your home free of charge and determine if there are any problems. Know the facts. Phone 416-965-6479. Collect calls accepted."

Is that really going to prompt people to become concerned and start calling? Why would they think they need an inspection? There is nothing there to indicate that aluminum wiring is, in fact, a potential hazard. There is nothing to indicate that aluminum wiring causes far more of the old technology receptacles to fail than does copper. There is nothing there to indicate that such failures can cause the connections on these receptacles to heat up to such an extent that a fire can start.

There is nothing to indicate that this heat can ignite materials outside the face of the electrical outlet, such as furnishings, bedspreads, curtains and so on, or that it can ignite materials inside the outlet box, such as wallboard or splinters and so on. The heat can ignite certain types of plastic faceplates, causing them to smoulder and possibly ignite the wall panel, the wall-



paper or other flammable material. The advertisement does not indicate that certain types of receptacles are a real hazard if connected with aluminum wiring. This is particularly so with the push-in type of receptacle.

I think a far more effective ad would be something like this: "Did you know that for reasons of safety the Ontario Housing Corporation is replacing all of its push-in receptacles which are connected to aluminum wiring with the new copper/aluminum revised receptacles? Perhaps you should know."

**Hon. Mr. Drea:** That, unfortunately, is not true.

**Mr. Breithaupt:** Is that not the case?

**Hon. Mr. Drea:** Not true.

**Mr. Breithaupt:** That was the information I had. If it is not the case, I am glad to be corrected.

But if there are certain opportunities for the advertisements to refer in a positive way to some of the things being done—if not that, perhaps some other positive things—it might encourage a certain attention. That, I think, would be helpful.

**Hon. Mr. Drea:** Maybe it would solve your problem. Bear in mind that if those ads were going out today, they would not be acceptable to me. When they went out, aluminum wiring was a very hot item in the news.

**Mr. Breithaupt:** You saw them as a supplementary almost.

**Hon. Mr. Drea:** That's right. The ad was a supplementary because, we might as well face it—the advertising industry is going to hate me and I guess some of my ministerial colleagues will hate me for saying this: I have found in the last two or three years that the most effective manner to get to people is not through "formal advertising." Put those two words in quotation marks. There appears to be a bit of a turn-off on formal advertising. If you are interested at the moment, yes, you might follow it up, but two or three days down the road you will not remember it. Perhaps that is because of the saturation impact; I do not now.

The most effective way of getting to the public and getting them interested is, number one, radio news; no question about it. Number two, and far behind, is TV. Perhaps that is because of the limitations of television news: It only occurs a couple of times a day, whereas radio news is a 24-

hour phenomenon and catches you almost everywhere—going to work, et cetera. The third way is print. I know print is the old reliable for government or for institutions, financial or other wise, but those ads simply did not get much of a response.

I consider any dissemination of the facts to be advertising in the broadest sense. In this sense, the public service announcement on radio is a vastly underrated commodity.

The approach we are going to use this time is based upon an experience we had with a booklet on which we just gave a routine public service announcement. Most people turn up their noses at those and say, "Is that the best you can do?" I don't know how many reprintings we are into now of that booklet, which had to do with car repairs. The demand was absolutely overwhelming—we're delighted—and it all came from that approach.

Now, I am not saying that that is the be-all and end-all, but this time round, it will be a package that, in the vernacular, is hard-sell, literally last-chance, in terms of trying to encourage people to have a particular inspection done. It is a fact that people are very wary of inspections. I don't know why this is, but fire departments have found this to be so too.

**Mr. Breithaupt:** They think of it probably in relation to some assessment involvement.

**Hon. Mr. Drea:** You will recall the big assessment that was done across Ontario. I'm sure as a member you heard day after day, "What right do these people have to come into my home?" I think there is a little bit of a turn-off there.

I welcome suggestions. I am going to try every single possible combination. But the real impact comes from the credibility and significance of the message when it appears in the regular news columns, not set aside in the category of advertising.

There is no question that if you really wanted to go the route that Procter and Gamble or some of the other companies go at such tremendous costs, and absolutely saturate the market in a limited period of time, I think you might be somewhat successful. I am not altogether sure what that would do.

I don't want to leave it that whatever we do will be in the form of paid advertising. And it is not the question of the money, I am not skimping on the money. But there has to be some way to get the message out there, because it is an attitudinal response: The person is either going to call or not.



It has also been suggested that when a problem has been found in an inspection done in a subdivision, you go immediately to inspect all the houses. In the beginning we were doing that, and there was no pattern to it, because primarily the problem with those push-in receptacles is the workmanship. If it was put in absolutely perfectly to this day it works.

The problem is that the original inspections—not ours—were on the design. The assumption was that the workmanship would be there, the same degree of workmanship and expertise as with the copper/aluminum revised receptacle. The CO/ALR was primarily brought in because it had so many backups that it allowed for that.

I am not trying to raise it as a very great obstacle, but there is no pattern. You can find a pattern in certain subdivisions because one electrical company did it. But where there were many different electrical companies there really is not a pattern.

The Ontario Housing Corporation program is one of preventive maintenance. When they find a certain number have burned out—I can get you their exact program—they replace them in the entire building. It is the same for private homes. With electricity, if you get one bad receptacle that does not mean it ends there. It may have progressed into many of the others, weakened them, et cetera.

12:40 p.m.

As I mentioned, Ontario Housing's is a preventive maintenance program. Where they do find a fault they do the whole building, but where there is no fault they do not do the whole building. It was just that word "all."

**Mr. Breithaupt:** Yes.

**Hon. Mr. Drea:** It is a very good preventive maintenance program. Many landlords do the same thing.

The difficulty is human nature. When you own your own home a lot of preventive maintenance is not done. Very few people get workmen in unless there is a real problem with the plumbing or the cellar wall. You see a little bit of water, and that's okay this spring. Next spring you kick yourself because the basement is flooded; you really should have done something.

I don't think you are going to change that. Big landlords carry out preventive maintenance for depreciation and repairs on a schedule, but I don't think people carry out that type of thing in their homes.

Before the estimates end, I think I can guarantee that I can put out for your consideration the actual campaign. I would ap-

preciate suggestions from the committee or anybody in the House, because this is a motivational thing. I would be absolutely delighted, I can tell you, if there were 10,000, 15,000 or 20,000 responses, because your synopsis over those months is relatively accurate.

In the first month or so, while it was on the news, I even kept it open Saturdays and Sundays, which was unheard of in government. I kept it open at night while there was a demand. Then it went down. From time to time there would be a bit of a news story and the demand would rise. However, lately, the news stories are played down.

Certainly, if the campaign is not actually physically under way, I can show it to everybody before we adjourn for the summer. So if you have any suggestions—

**Mr. Breithaupt:** That would be fine, Mr. Minister. By our suggestion vote 1503 on technical standards will be dealt with—

**Hon. Mr. Drea:** I will table it for your consideration.

**Mr. Breithaupt:** —on June 19. If the Aluminum Wiring Resource Centre people could be here that day we could ask a few questions.

**Hon. Mr. Drea:** I would hope to have it out to the members before then, so that they can take a look at it.

**Mr. Breithaupt:** That would be just fine.

**Hon. Mr. Drea:** But June 19—it would be rather hard on getaway day to deal with suggestions.

**Mr. Breithaupt:** I hope we will be able to deal with it.

**Hon. Mr. Drea:** It's not opening day.

**Mr. Breithaupt:** There is just one other theme I would like to refer to in my opening remarks, one that has received very little attention. I think it does reflect some problems with respect to protection of consumers and the regulation of industry. It has to do with the relationship of the government to the brewing industry in Ontario.

In January 1980 it was announced that the price of beer was going to increase some 65 cents per case of 24 bottles for the average brand. The items that were mentioned as causing the increase were the costs of raw materials, transportation and labour. It seemed like a small matter at the time, but our research staff followed the item up.

We found that although the price increase was announced by the breweries, the price of beer is regulated by the Liquor Control Board of Ontario. Section 3 of its act states that the

board has the power to fix the prices at which the various classes, varieties and brands of liquor are to be sold. Of course, the definition of liquor includes beer.

We first contacted a representative of the board, who informed us that the matter was a ministerial one. By contacting the minister's office we eventually were able to be in touch with the brewers.

The brewers provided us with their complete application, which they had submitted to the liquor control board in support of their request for an increase in the price of beer. On the basis of the application and our conversations with the brewers, it became apparent that one of the reasons, perhaps the major reason, for the application for an increase in the price of beer at that time was to allow the brewers to increase their profit margin. This profit margin had hovered around 10 to 12 per cent in the last three or four years and they apparently wished it to be increased to approximately 14 per cent.

Quite frankly, I cannot blame the breweries for seeking an increase, but when the price is being regulated by the government through the Liquor Control Board of Ontario it seems to me incumbent upon the government to examine any application for a price increase and satisfy itself that whatever increase is allowed is in fact warranted. Such appears not to be the case in this recent increase, in my view.

On the basis of the application form and on the basis of conversations with staff members at the LCBO who were involved, three items seem to have arisen. First of all, it is not possible to determine what is the resulting rate of return on investment for a brewing company on the basis of any given price rate. The brewing industry figures as a whole are aggregated and, further, it is unascertainable whether the cost items are matters properly borne by the provincial subsidiary company, the parent company or another subsidiary.

Secondly, the LCBO makes allowances for cost that will be considered to justify a price increase, but it has no set definition or identification of what an allowable cost is. It appears that the breweries have a strong voice in making that determination.

Thirdly, the actual application form has several charts with figures, which one should be able to relate to one another, but it is difficult to do so because some figures are given in the terms of fiscal year and others in the terms of calendar year. The problem is that there is apparently not a standard

application form, which makes trying to find justification for the increase virtually impossible.

There are some other problems, but the major one I see is that the LCBO, which is charged with fixing the price of beer, in effect does not seem to have the means by which to examine the applications of the breweries. On the basis of the investigations that we looked into it seems impossible to determine just whether or not the price increase is warranted. It seems to me that when you are dealing with the regulation of what is, in effect, a monopoly, the job of the LCBO should be quite clearly to be in a position to review and comment upon the applications which have been made; and in this instance there seems to have been some gaps in the procedure.

I wonder if the minister would have any comments to make in respect to this procedure and how he thinks it may be improved upon.

**Hon. Mr. Drea:** First of all, what appear to be gaps stemmed from some difficulty in getting back to your researcher. I do not think I would have had the same difficulty in talking to you as a member.

The application goes through the LCBO. The reason for that section in the act is to get the breweries out of a combines situation. You will remember that they have to sell at the same price throughout Ontario. They all sell at the same price, and the only way that could be accomplished is by that particular section in the act, which appears to be all-embracing, in that there is the one price wherever you are in Ontario, even for the premium, the over five per cent alcohol—I do not want to give the brand name; they get enough free plugs. For over five per cent, what they call premium alcohol—the one at 6.2 per cent and the one at 6.3 per cent—we require an additional price as a kind of caution to the customer that, while it is in the same bottle as the five per cent it has higher alcohol content.

**Mr. Breithaupt:** But that is a common price, also, across the province?

**Hon. Mr. Drea:** Yes. The LCBO does vet, there is no question about that, but the final vetting is done by the Treasury which does look through it.

Bear in mind that we have to look at the last four years. The breweries were caught up in the price freeze and they should not have been, because that price freeze was a result of the fluctuations of the Canadian dollar and overseas product. You will recall

the very lengthy price freeze. They were caught up in that.

When they came in in 1979, at the time the price freeze went off, they made a number of proposals. They came before the Treasurer (Mr. F. S. Miller) and myself with very long documentation. They did not get what they asked for at that time.

12:50 p.m.

Taking in balance the application this year, combined with the past history and, indeed, with the labour negotiations which are unique in Canada—the pattern is set in British Columbia and passed eastward, rather than the other way around—it was our feeling at this time, because of the economics of the industry, that that particular increase was warranted.

The Liquor Control Board of Ontario only goes so far. It makes a recommendation on the basis of what it has. All of the things you have raised are quite true. That is the limitation upon the LCBO. When it comes to the Treasury there are other more conclusive determinations which the Ministry of the Treasury and its analysts are able to make.

Bear in mind too, that included the additional beer tax in the Crosbie budget, the one that was never put into effect. They included the impact that would have and assumed that Mr. MacEachen would announce it some time this year. That he chose to do so in April is coincidental. They anticipated that, just as, I may say, the foreign sherry and port producers did. You will recall that in their quotes to us this year they really jumped their prices very, very substantially.

**Mr. Breithaupt:** With that expectation.

**Hon. Mr. Drea:** They told us flat out that John Crosbie had put it in his budget on the basis of a white paper, and that, whether it came in April or May or December, the next Minister of Finance was going to have to keep it because it really was a statement by Revenue Canada. That had some bearing.

The difficulty in getting back to you was—and we are going to arrange a procedure which is very uncomplicated—that part and parcel of some of these analyses were cabinet documents which did go to the full cabinet. That was the only reason for the delay. As I said, my response to a member would have been slightly different.

We are going to work out a procedure whereby none of the documentation is in a restricted category. We will make it so that it is a matter of public record.

**Mr. Breithaupt:** I think that is a wise move.

**Hon. Mr. Drea:** There are a number of things we have to look at in the beer industry, but there is no vote for the LCBO items. Maybe I can look at them in a very brief form.

I guess the critic for the New Democratic Party is not going to be able to make an opening statement. I do not want to take up your time today.

**Mr. M. N. Davison:** I will be able to make part of it.

**Mr. Breithaupt:** We can deal with that when we deal with the vote.

**Hon. Mr. Drea:** There is no vote. That is the problem. I do not want to preclude Mr. Davison making his remarks today; if you will bring it up on Monday I can provide about a six-minute explanation. It has to do with exports, new markets, declining consumption here and in the rest of Canada, a whole combination of things, plus the Supreme Court's finally giving jurisdiction over prices and alcohol content to the provinces, all of which occurred within that particular 50- or 60-day period. It is now June and everything is done, but at that particular time it was not.

**Mr. Breithaupt:** We could certainly deal with that once Mr. Davison has completed his remarks.

**Mr. M. N. Davison:** Mr. Chairman, I just want the minister to know that I will save the part of my opening remarks that deal with The Tin Drum and censorship until Wednesday, so he can relax.

**Hon. Mr. Drea:** I welcome your comments on The Tin Drum. You will be picked the most popular man at the convention this weekend, Mr. Davison. Please, please.

**Mr. M. N. Davison:** Thank you. I wanted to tell you that, Frank Drea aside, these are going to be rather dull estimates without my colleague from High Park-Swansea (Mr. Ziemba) present to talk about the various liquor votes.

**Hon. Mr. Drea:** They are in the fall.

**Mr. M. N. Davison:** I would like to say in Mr. Ziemba's absence that, indeed, patronage is alive and well in Ontario, and on my own behalf I would say that the Ministry of Consumer and Commercial Relations is right in the vanguard of political patronage in Ontario. That has been apparent to me over the years that I have been the critic because of the appointments we have seen of retired Tories to posts in this particular ministry, and because of some of the other procedures in



which the ministry has managed to involve itself.

Do you want me to name names? I would be quite happy to.

**Hon. Mr. Drea:** No, no.

**Mr. M. N. Davison:** I think everyone is aware of them. In Mr. Ziembra's absence, it is something I would like to make sure is on the record in this committee.

**Hon. Mr. Drea:** We have some New Democrats. We have a few—I was going to say NDPers, but I won't—people of other political persuasions in some of the appointed positions in this ministry.

**Mr. M. N. Davison:** It's nice to know you have hired the odd nonTory from time to time.

**Hon. Mr. Drea:** I'm a friendly guy, a very friendly guy.

**Mr. M. N. Davison:** The two major elements I wanted to deal with in my leadoff involve what I perceive, and what I think a lot of other people perceive, to be a failure of the ministry, and the minister personally, to protect consumers. What disturbs me as time goes on, with the three of us as the critics and the minister, is what I perceive to be an incredible lack of imagination and creativity in defending consumer rights; indeed, a lack of will. The minister has a spectacular style, and I have no hesitancy in saying so, but he has a substance which is almost nonexistent in terms of consumer protection.

The first area I want to examine is one Mr. Breithaupt concentrated on—and I think quite well—in his leadoff, the whole area of consumer protection. I might add consumer safety, because the two go hand in hand. The other area, which is becoming increasingly important, especially for its lack of high profile in this ministry, is consumer and public access to information, which I think is an important area.

The whole field of consumer protection has become increasingly important. Mr. Breithaupt mentioned the bill the minister introduced today in the House, the Registered Insurance Brokers Act. It raises some specific questions and it also raises the whole general area of deregulation or self-regulation, which the minister hails as the greatest thing since sliced bread. I think it has some serious difficulties inherent in it.

I haven't had a chance to read the bill the minister introduced today. I assume it establishes a 12-member board, as was originally suggested.

**Hon. Mr. Drea:** Eleven.

**Mr. M. N. Davison:** Eleven? The original board was totally dominated by the industry. In the original 12-member proposal—and I assume the 11-member proposal is not terribly different—there was only one consumer representative. How many do you have now?

**Hon. Mr. Drea:** Three.

**Mr. M. N. Davison:** You had suggested, at that time, one representative from the Consumers' Association of Canada.

**Hon. Mr. Drea:** I tell you the bill today has three; that is three members of the public. I don't know the breakdown.

**Mr. M. N. Davison:** One of whom, I suspect, will be a lawyer, and one of whom will be an accountant.

**Hon. Mr. Drea:** I don't know.

**Mr. M. N. Davison:** We will get to that, perhaps, after we have had a chance to see that bill in the House.

Self-regulation is a rather interesting process. When we turn over regulation from government to the private sector so that government no longer acts as an effective consumer watchdog, it seems incumbent on us to make sure there is a large consumer representation on the boards that are established. That doesn't mean we appoint a lawyer or an accountant or someone like that. When I say "consumers," I mean consumers of the product, people clearly representing consumer interests, and not somebody who is appointed by the minister or by the Premier's office or by the cabinet or by some people in the industry, the kind of system that leads to appointments like we have seen in this ministry of retired Tory politicians and other such people.

1 p.m.

If the minister is going to continue his brave march toward self-regulation, he should exhibit a bit more flair and imagination in terms of how appointments are made. I might suggest, for example, when he talks about public representatives on these boards, maybe it should be in the legislation that, if there are three or four or five people allegedly representing the public interest, one of them should be appointed by the office of the official opposition and one might be appointed by the third party in the assembly.

**Hon. Mr. Drea:** You are accusing me of patronage and now you want me to open the door to your patronage.

**Mr. M. N. Davison:** Oh, no, not patronage at all. Patronage lies in the appointment, not in the capacity to appoint.



**Hon. Mr. Drea:** I see.

**Mr. M. N. Davison:** I would be happy, later on, to engage the minister in a dialogue on definitions of patronage because they do not seem to be clearly understood around this place.

**Hon. Mr. Drea:** I would hope you would be a small "I" liberal, as I am, and that you wouldn't necessarily give me people of your own persuasion. I take some other people too, you know.

**Mr. M. N. Davison:** I most certainly am not a small "I" liberal. The other thing raised by the matter of self-regulation which really disturbs me is the fact that it seems to go against the reality of our times in terms of what is happening in the corporate world. We live in a time of increasing integration in business, in a time of ever greater conglomerate development. I am not sure—as a matter of fact, I am convinced—that self-regulation, deregulation, doesn't make a great deal of sense in that kind of corporate world. The minister heralds the advent of deregulation, complete self-regulation, in the real estate industry at the same time as we see the development of companies such as Century 21, or whatever on earth that company is called, in the real estate industry. It is a gigantic conglomerate.

It seems to me, as we witness the increase of giant corporations, now is the time when, more than ever before, it is necessary for government to be a watchdog, for government to be an aggressive consumer defender and advocate. I think you are going in the wrong direction at the wrong time. Instead of playing the role of consumer defender, government will be cast in the light of corporate cheerleader, or, at best, a witness to events passing by.

I think that is a very dangerous philosophy that this government has developed and I think it should be rethought. I suspect it can and will lead to some fairly serious difficulties over the next four or five years.

**Mr. Chairman,** I would be quite happy to keep the rest of my remarks for Wednesday morning.

**Hon. Mr. Drea:** Could I make just a very brief reply? I thank you for reminding me of Mr. Breithaupt's first point. He and I got off onto something else. I meant to reply to his first point.

For the whole decade of the 1970s, the ministry was in a very transitional period. First of all, there was the old or the tradi-

tional regulatory type of law that was really fashioned while consumer protection was primarily under the Ministry of the Attorney General and that involved the bonding or licensing of specific trades and occupations and so forth. Obviously in the early 1970s—I think Mr. Clement, who was the minister at that time, touched a lot on this—we were at the stage where we were going to be bringing in hundreds and hundreds of different laws because everybody wanted to be licensed and bonded. There was a public demand.

The first transition took place, of course, with the Business Practices Act which was an umbrella approach without regard to trade or occupation. It just made the offence, the protection and the remedy paramount. Since then, the growth, the expansion and the use of the Business Practices Act has all but negated the Consumer Protection Act which was the very basis of this ministry.

Also, in the latter part of the 1970s we brought in the Registered Insurance Brokers of Ontario, which really is a compensation fund, albeit handled a little bit differently. We brought in the compensation fund and the remedy. We are now in the process of reaching agreements with various industries to provide for binding arbitration as a condition of not being licensed. All of these things are coming.

Starting in the fall we are going to begin a total rewrite of the Consumer Protection Act to put the Consumer Protection Act into proper perspective. The Consumer Protection Act really should be the bedrock of the ministry and it should put into perspective the various trends that have developed. Yes, there is a place for continuing regulatory law, although probably not too much of a place in the future. I said at the time of the Travel Industry Act that it would probably be the last of the occupational regulatory laws because of the Business Practices Act.

There is an expanded role for the Business Practices Act. Determination is going to have to be made, in terms of the Consumer Protection Act, as to what perspective it has. By that, I mean that originally, when the old department was started and took over, the operative word was "consumer," consumer in the sense of the person who was in receipt of the goods, at that time, and since the Business Practices Act has come into effect, the goods and services.

We keep getting into grey areas where it involves a business practice, not a consumer within the strict limitations of "consumer." A perspective has to be put in.

**Mr. Breithaupt:** Health services, for example.

**Hon. Mr. Drea:** That is right. There has to be a perspective put in because that area is really very grey. It involves total liability, which, obviously, in terms of everything else going on in the marketplace, is no longer acceptable as the be-all and end-all. We must also decide where we go in terms of deregulated industries. Since we have progressed so far on so many independent fronts, albeit simultaneously and by necessity to meet problems, there obviously has to be a re-evaluation and new legislation, a basic Consumer Protection Act.

I do not think it will be easy to write. A lot of people will want input to ensure, again, that it meets specific situations, and that is going to have to be a determination we make. What I would like to see and what I envisage is a very basic, relatively simple act getting around the things Mr. Breithaupt raised. Even a Queen's Counsel would have to ponder at his desk the meaning of certain phrases in our legislation.

We are going to commence in the fall. Obviously it must have the widest input, not just from members of the House but from people outside. I hope some time in the 1981 sessions it can be brought forward.

Perhaps the route to go is some kind of preliminary bill with the widest possible dissemination across the province. I am not enamoured of white papers; I prefer a draft bill. I do not think people take a white paper or a green or an orange paper as seriously as a draft bill.

I think that should set the direction realistically for the 1980s. I do not think we can project beyond that because we saw tremendous changes in the 1960s and counter-changes in the 1970s. Now the basic thing the consumer wants is a remedy. They have found that many of the programs provide a remedy, but it takes so long to get the remedy that they really do not consider it a remedy any more.

Another thing coming in is industry-wide arbitration, which General Motors of Canada Limited pioneered in your particular area. It has been successful and it is spreading across the country. It obviously is going to have a tremendous impact, because consumer protection laws now still rely pretty basically on the courts. Realistically, although the values of the small claims court have been expanded, people are still reluctant to head in that direction.

I think your points are very well taken. We have to make a start, particularly with the advent of deregulation, because we now have a third force there, the regulatory, very restrictive, very limited statutes that we inherited from the Attorney General in the broad scope of the Business Practice Act. These new initiatives in conjunction with industry are the third thing.

My concern is that the Consumer Protection Act, as an act, keeps getting pushed further and further back, when indeed it should be the cornerstone.

**Mr. Chairman:** Thank you, Mr. Minister. We are adjourned until Wednesday at 9:30 a.m. for private bills, followed by the estimates at 10 o'clock.

The committee adjourned at 1:11 p.m.

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# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Wednesday, June 11, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, JUNE 11, 1980

The committee met at 9:59 a.m. in room 151.

After other business:

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (continued)

On vote 1501, ministry administration:

**Mr. Chairman:** We have 23 hours and 31 minutes left in these estimates. When we last met Mr. Davison had just started his opening remarks, and I invite him to continue.

**Mr. M. N. Davison:** Thank you, Mr. Chairman. If I might, I would like to go out of sequence.

When I did the initial four or five minutes of my opening on Friday, I suggested that I wanted to deal first with the area of consumer protection and safety, then with the area of public access to information. I would like to change the sequence and deal first with the area of consumer protection and safety, then with the area of public access to information. I would like to change the sequence and deal first this morning with the Ontario Board of Censors. I had informed the minister that I would be raising that matter when we met today.

I want to be very specific and very clear about what it is I am raising with the minister and the committee today. I am raising the question of the procedures and activities of the Ontario Board of Censors. I am not raising the question of censorship.

When this matter was raised by me and by other members in the assembly, the minister wanted to know our position on the issue of censorship. I hope I can lay that aside as an issue—unfortunately, it sometimes becomes a sideshow—and put on the record for the 27th time in the last three weeks the position of my party and my position.

That position is contained in a resolution I introduced in the House a week ago Monday. It very clearly states that the New Democratic Party favours the reduction of

the mandate of the Ontario censor board to a mandate of classification and issuance of warnings, in the hope and belief that we would then have a system in which Ontario's parents and families could make the decision to view or not to view a movie, rather than having the government and its agencies and boards make that decision for them.

I also suggested, when we dealt with this matter in the previous estimates, and I have suggested it to the minister on a number of other occasions, that there are things that can be done with the current system, in my opinion and in my personal opinion only to improve it. I suggested that another look should be taken at the compensation of the board to see if there is some way in which—

**Hon. Mr. Drea:** You mean "composition," not "compensation."

**Mr. M. N. Davison:** You are right, I do—the composition of the board, to see if there are ways in which it can be made more representative of the community.

**Hon. Mr. Drea:** You know I have done that.

**Mr. M. N. Davison:** You have taken a look at it.

**Hon. Mr. Drea:** No. I have done it.

**Mr. M. N. Davison:** We will come to that.

**Mrs. Campbell:** Don't you want to hear what he has done?

**Mr. M. N. Davison:** I am sure the minister will tell us.

I also suggested at the time that the board should publish the reasons for its decisions and that it should indicate to the public what parts of films it has removed or cut.

I would go further at this time and say to the minister, as I have done in speaking to other people, that I also believe responsibility for that board, if it continues in existence, should be transferred from this minister's jurisdiction under the Theatres Act to the Ministry of Culture and Recreation where it really belongs. I also think there should be a built-in appeal system, which there is not with the current board.

I have put that as clearly as I am capable of putting it. If the minister will accept that as being on the record, as the position of my party, as to what we would like to see in Ontario, and my own position, the suggestions I have made over the past year for ways in which I personally believe the board could be made better, we can set that on the table and leave it there for discussion at some other time.

I want to be very clear that the matter I want to raise today is completely separate from that. There are some real problems at the censor board today and I think what is needed is a public investigation of the procedures and the activities of that board. If I can, I would like to put the case against the background of The Tin Drum, which I think is perhaps the most reasonable way to deal with it.

10:30 a.m.

The Ontario Board of Censors has been established by statute, by the Theatres Act, and it is given total and unlimited discretion by that statute. The statute does not set any criteria for censorship and there is no procedure set out as to the decision-making processes of the board. There is no right of appeal by any person from a decision of that board, as has been made quite clear in this case.

I believe the absence of appeal, the lack of clarity as to the board's authority and mandate and the lack of specific procedures encourage decisions that can be both arbitrary and unfair. Each member of the board is assumed to have, and apparently does have, only one vote. I think that when the board holds a vote for its own purposes, the vote should be counted in that way and that should be the decision of the board.

I also think the chairman and vice-chairman of that board have an obligation—if not under the statute, then simply because it is right—to make sure all relevant correspondence that comes to them in their capacity as chairman or vice-chairman finds its way to the other members of the board.

I want to be clear about this too: There is something to be said for impartiality at that board, Mr. Minister. I would not be a good person to sit on the Ontario censors board because I am firmly opposed to censorship. Therefore, I do not think I, or people like me, should be on that board.

**Hon. Mr. Drea:** You could hardly be on the board if you are opposed to the principle.

**Mr. M. N. Davison:** I am not sure that impartiality is reflected in the current members of the board. I think there are members on the board who are partial on the issue of censorship. The case of The Tin Drum clearly shows the arbitrary nature of the board's decisions and it points to some fairly serious procedural problems on that board.

In the case of The Tin Drum, the chairman, the vice-chairman and at least one other member of the board, to my knowledge held the view that substantial cuts were required in the film. After a meeting on May 1, a majority of the board was in favour of only one cut, and I believe that should have been the decision of the Ontario censor board. Three members would have approved the movie with no cuts at all at that time. The decision in favour of one cut was unacceptable to the chairman or the vice-chairman, and that decision was never released.

**Hon. Mr. Drea:** Let me correct you. It was not acceptable to the board, not the chairman.

**Mr. M. N. Davison:** I am sorry, that is not what I said and that is not what I meant.

About one week later, after a meeting at which members' employment was threatened, a further vote was taken. It was exactly the same, but it, too, was not released. All through that period of time the distributor and the distributor's representatives were not informed of the decisions of the board.

The other day I received a letter from someone privy to the decisions of the board. At one of those meetings at which a subsequent, not the initial, decision was taken—that is the meeting I referred to just a moment ago—the items on the agenda before the vote included the issue of a rotating board and the issue of the replacement of members of the present board. Immediately after that item was discussed, another vote was called on The Tin Drum. That, to me, smacks of coercion.

On May 13, the distributor's lawyer indicated verbally, over the telephone, to Mrs. Brown, the vice-chairman, that he was prepared to recommend the same cut as had been made in England in order to resolve the matter, but he wanted some assurance that that recommendation would be acceptable before it was made officially.

On May 14, the chairman wrote, in response to a deadline set earlier by the distributor's lawyer, that the board's position had not changed as of May 13. This made



absolutely no sense in the normal cause of the correspondence, but I assume it would have made some sense in private to other members of the board.

On May 14, the solicitor for the distributors had a letter prepared and read over the telephone to the chairman and vice-chairman, making official the offer that had been made verbally on May 13. At the request of Mrs. Brown, this letter was recalled and replaced with another letter which did not arrive until 10:30 on the morning of May 15.

The chairman and vice-chairman quickly convened a meeting of the board on May 15. One of the members changed his vote from no cuts to three cuts, resulting in a very narrow majority indeed in favour of three cuts. On May 16, this final decision was released by the board as the decision of the board.

On May 20, it was learned that the board had not been advised of the distributor's offer before making its decision, which, by my count at least, was the third decision of the board on that particular issue.

I understand each member of the board has been given legal advice not to discuss this matter publicly. I understand also that members of the board are prepared to testify publicly if they can do so under oath, so that their jobs will be protected.

Believe me, there are members of that board who fear for their jobs if they publicly, without protection of oath, make comments about the activities and procedures of the board. Those people are concerned about their jobs. They are civil servants and they are in a very difficult position because of the manner of their appointment, through order in council, to these particular posts. They have some real concern about what kind of position they will be in if they cause trouble by speaking publicly.

I believe the morale of the board is at a very low point. I think the members of that board are dissatisfied; they are frustrated. They have been totally demoralized by the wringer they have been put through on The Tin Drum issue. "Manipulation" would not be an overly harsh word to use.

To some extent, the concern that has been expressed by the public is important too. It is now seven weeks since the original order of the board for censorship of that film. There is substantial public concern over that film which has led to substantial concern about the activities and procedures of that board. There is an obligation on us as legislators to see that some public forum is created where members of the board can

testify under oath as to what is happening at the board, so that there can be no question of their continuing employment being contingent on what they say, and so that they do not have to worry about a punitive response to what they say.

There are other things at the board which concern me very much. I understand the projectionists have been instructed to report directly to the chairman or the vice-chairman of the board if, when viewing a film, a projection run, they have the feeling that some scenes have been overlooked by the board. What possible authority can a projectionist have to take on that role? I really do not understand.

I have had other reports about things which have been happening at the board that concern me greatly. Some documents have come to me and I cannot table them for the committee because, frankly, I fear for the job security of the people who passed them along to me. They raise, for me, some real concerns.

10:40 a.m.

There is a memo which the minister either has in his possession or will have no difficulty getting, dated April 8, 1980, from Mrs. Mary Brown, assistant director to the members of the board in which she outlines nine points of concern. Some of them I find absolutely mystifying.

The seventh point deals with the procedures manual for the board and this is not a board that was established yesterday. It reads: "As I mentioned, a draft copy of all procedures within the theatres branch has been prepared. I will circulate this under separate cover. Please consider this a draft only. I would appreciate any individual comments." They are still in the business of making procedural manuals for the board? I mean, I really wonder what is happening up there.

I am concerned about the meeting schedules that the board has. I am concerned about who holds the real decision-making authority in that board.

I do not want to go on at length. I think I have put the case as well as I can in the short time that is allowed during estimates. I think that an investigation in a public forum, with witnesses called under oath, is necessary and called for. I am frankly worried about what is happening at the board. I would like to ask that the minister, on his own initiative, seek to establish a judicial inquiry into the activities and procedures of the Ontario censor board.

Can I accept the minister's grimace as a response in the negative?

**Hon. Mr. Drea:** I am smoking.

**Mr. M. N. Davison:** I occasionally grimace when I smoke too.

If that is unacceptable to the minister by way of suggestion I have an alternative proposal which I would put before the committee.

**Mr. Chairman:** Would the minister like to reply to that one question?

**Hon. Mr. Drea:** I would rather do it all at once. I do not need to reply to that one.

**Mr. M. N. Davison:** The alternative I would put before the committee is that we set aside six hours of the estimates, two days next week—preferably Wednesday and Thursday—during which we can inquire, as the justice committee of the assembly, into the procedures and activities of the censor board and that witnesses be called under oath. I do not mean to exclude any other witnesses, but at least the chairman, vice-chairman and remaining members of the Ontario censor board should be called before the committee at that time to testify and answer questions from members of the committee.

As I said earlier, I have some other matters I want to deal with under the first vote. I would be quite happy to break my remarks at this point and hear a response from the minister.

**Mr. Chairman:** I trust, Mr. Davison, that the last was a suggestion and you are not moving that motion—

**Mr. M. N. Davison:** I am not moving the motion at this time. I did ask earlier if the minister would establish a judicial inquiry into these same matters.

**Mr. Chairman:** I am going to ask the minister to reply to Mr. Davison's remarks on this one issue at this point.

**Mrs. Campbell:** On what one issue, may I ask? I thought the minister was was going to reply to the totality of it.

**Mr. M. N. Davison:** I am sorry. I assumed what the chairman meant was just on the issue of the censor board rather than on the other issues in my leadoff.

**Mrs. Campbell:** I am sorry. I thought he originally said to reply to that question, and I wanted to clarify it.

**Hon. Mr. Drea:** First of all, it is a very slanted presentation. I have gone through in the House on two occasions—and the Hansards are available—a chronology in reply to

a question by the Leader of the Opposition (Mr. S. Smith). Subsequently there was a point in that which he felt needed clarification. I went through again in a very detailed manner what the procedure was, and it is in Hansard. I will stand by what is in Hansard.

I am very concerned that you used the word "manipulative." If you are suggesting that I manipulated them I would appreciate it if you would say so. If I didn't manipulate them, I would appreciate you telling me who did manipulate them.

You say their jobs have been threatened.

If you are accusing me of threatening their jobs that is absolutely ludicrous. For if their jobs are threatened because of the rotation you are the author of it. You planted the seeds here last October, perhaps not in the form of rotation, but you urged, beseeched and demanded that there be a broader base.

Your colleague the member for Riverdale (Mr. Renwick) appreciated my difficulty with a seven-member board which was appointed by order in council and had civil service status—that the only broadening could be by attrition. If you look in those Hansards you will see that the member for Riverdale suggested alternatives.

There was also the agencies, boards and commissions report which was tabled in the Legislature in 1978 by my colleague, Mr. Wiseman, who was then Minister without Portfolio. It put specific terms on personnel in agencies, boards and commissions of which the theatres branch is one. Subsequently in documents, both within the government and outside it, Minister without Portfolio Hon. Mr. Pope set deadlines on the basis of a three-year initial term and a subsequent renewal for three years.

That rotation has been a matter of record for some months. It is also a matter of record that when the theatre distributors—I don't recall their trade name, but I will get it for you; they are not the exhibitors, they are the distributors—Mr. Millard Roth and another gentleman, came in to see me and the deputy in February or March and they asked for a rotation. They were very pleased that the chairman already was to be rotated and that Mr. Sims is retiring in June because his six years are up. They asked about the rotation of the members and an expanded board to enhance community standards on a broader base, which was your original proposition.

**Mr. M. N. Davison:** No.

**Hon. Mr. Drea:** Mr. Davison, it certainly was. You talked to me about cultural differences, ethnic differences, people differences.

I suggest you read the Hansard. That is broadening the base.

**Mr. M. N. Davison:** I agree with that. But I don't want to interrupt you until you are through with your interpretation.

**Hon. Mr. Drea:** Thank you.

I discussed very openly with Mr. Roth and his associate, one of the logistical difficulties that I talked to the media about some time ago; that with one exception—the Ontario Securities Commission—this is the only area where people are appointed by order in council, as is the custom with agencies, boards and commissions. But none the less, they immediately become civil servants. That posed the logistical difficulty. I explained that to them and told them it would have to be worked out some time subsequent to this.

In my discussions with the members of the board I asked them if they would please speak to the deputy minister—I bent over backwards so that they wouldn't feel it was the minister who was asking—because they are civil servants and obviously many will have to be relocated.

Because they do have job rights, Mr. Davison. I am very protective of job rights. If you will talk to this ministry and to both my previous ministries you will learn that when anyone was to be transferred, it wasn't done as casually as it is done in other ministries. Ask them to do two things: First, to communicate from their own experience what they felt would have to be done in the interim or transitional phase; and, secondly, to outline what they felt might be their own personal case.

But that went to the deputy because it was going to be purely a civil service matter.

10:50 a.m.

I don't think that anybody was threatened at all. If you are suggesting that I threatened them, that is not true. If you are suggesting that somebody else threatened them I would like to know who it was that threatened them.

I suppose I could have been cavalier and said, as happened with some boards not in my ministry: "Can't you read? The ABC report of Mr. Wiseman was debated very fully in the House; it has been around for some time. Mr. Pope's deadlines have been implemented." There have been people on agencies, boards or commissions of the government who expected a renewal of their term and didn't get it because they had already been there for six years. They became very upset, because nobody had ever told them about this. For that reason I wanted these

people to be fully aware of government policy in this regard.

You may say I threatened, but I thought I was being a nice guy. I could have sent down copies of Mr. Wiseman's report and Mr. Pope's report. I could have sent them Mr. Pope's admonition to me that this was the last board or commission I have—and I have many—that was not in line with the agencies, boards and commissions report, which set June 30 as the deadline for the implementation of renewal arrangements.

I have to go through the internal estimates procedure to get a budget for the next fiscal year to be able to pay people, whether they are on salary or per diems; and while the structure of it may not be something the Legislature wants to hear right now, certainly it will be important on April 1, 1981 when the provincial auditor wants to know. It is not easy and cannot be done overnight.

I think it is a matter of record that I, my deputy and other advisers had been working on this for some time. Because of the approach of the June 30 structural deadline I felt that we had to begin moving if we were going to conform to government policy.

Just to go over the matters that have been raised, would you like to say who manipulated whom? Was it me? Did I threaten them? Since I have said I didn't, I would therefore like to know who did. You said they were manipulated; that it was a strong word, but it fitted the circumstances. And it was a direct remark from you about their jobs being threatened.

**Mr. M. N. Davison:** If you are asking for a response, I would be quite happy to give it to you.

**Hon. Mr. Drea:** Yes, sure.

**Mr. M. N. Davison:** When vote after vote is held on the same issue until one is taken that satisfies certain people; when at the same meetings, just before votes are called, the entire issue of job security and rotation comes up—in a totally bizarre context like that—I call that manipulation and I call that coercion. If you, sir, are responsible for it—

**Hon. Mr. Drea:** Are you saying it is me?

**Mr. M. N. Davison:** I don't know. I frankly don't. I know that you were at the meetings—

**Hon. Mr. Drea:** Mr. Davison, you are accusing me—

**Mr. M. N. Davison:** I am not accusing you of anything.

**Hon. Mr. Drea:** You are telling me that the course I should have taken, in the face of



government policy about the way that agencies, boards and commission—of which this is one—were to be staffed, was to forgo completely consultation with the people who were going to be directly affected until one minute to midnight of the day before it was to be done.

**Mr. M. N. Davison:** No, sir.

**Hon. Mr. Drea:** I just find that totally unacceptable as an employer or as a minister. That's what you said.

**Mr. M. N. Davison:** No, sir.

**Hon. Mr. Drea:** I have gone to great lengths to point out all of the documentation showing that this has been going on since 1978. I am the first to admit that people quite often do not appreciate the full significance of such matters.

I did not want the board members to feel threatened; I wanted them to know that the minister and the ministry—particularly the ministry and the deputy—and the civil service to which they are attached were very concerned about the impact of an ongoing government policy on them as individuals. And also, as a mark of respect for their contributions in the past and up until the day they depart, how the transition could best be done to be consistent within the industry. Now if you want to fault me for that you just go right ahead.

I will continue on some of your other remarks. There was only one decision made by the board, as is the usual case, and that decision was arrived at on April 22, 1980. A discussion becomes a decision only when the members of the board initial the proposed decision. When they initial that proposed decision, it becomes the decision.

**Mr. Breithaupt:** Who drafts the decision?

**Hon. Mr. Drea:** It would depend upon who saw the film, because all the panel do not see the film. If there's any question about it, and 99 per cent of the time there is none, then the other people go in and see it, but in most cases nothing happens to the film so there's really—there are discussions sometimes, as to whether it should be adult or general, or whether it should be restricted or adult; if there is a particular scene or language that might put it into the restricted category rather than the adult category, they will go and look at that scene. But obviously, with the volume of movies, all seven do not sit and watch; bear in mind that they still have to do the eight millimetre movies and others. They initial those.

Now the procedure is that the decision is conveyed to the distributor. If the distributor

wants additional information, obviously he gets it.

If I could just digress for a moment. The board doesn't say publicly what it has done, at the express demand of the industry. The industry here, the distributors, as you know, distribute the bulk of their product—all of their product in reality I suppose is offshore, except for the odd Canadian film. Their parent distributor—whether it is a studio, or whether it is a major distribution organization, either in the United States or in Europe—send them films. They don't exactly select the films they are going to get; just like a portfolio of securities: here are the things that you will accept.

They have the concern—since they are not in control of what they receive and must submit to the board, because obviously they are obligated to have it shown—that from time to time they get films that are totally offensive to them, just plain sleazy. They would feel embarrassed if all these things were made public, on the grounds that it would be one thing if it were their film and they had submitted it. But, on the other hand, since basically they are wholesalers and have no control over what is there, they want the matter to remain private.

Now, they are perfectly free to go forth and say what has been cut, or what has been suggested, or whatever. The distributors are perfectly and absolutely free to say whatever they want when they leave the board, but they have asked that the board not initiate the discussion. I think that answers that question.

On April 30, 1980—this is redundant because it was already read into Hansard, but for the convenience of the committee, I will read it again—a review was requested by the distributor. That is the procedure. The distributor asks for a review.

On May 1, 1980, a hearing was held—that was with the distributor's solicitor, and the chief solicitor for the ministry, Mr. Ciemiega. He is the solicitor for all boards and commissions, as well as for the ministry. They formally then asked for the review.

11 a.m.

On May 2 and 5, the film was reviewed. No decision was reached. There was dialogue; there was discussion; there were straw votes. This is in the nature of the same thing that takes place in a jury room. There are many votes taken, on occasion, in a jury room. It is only the final one that is a real vote, so I do not think that is a totally unheard of procedure.



The reason I started to interrupt back at the beginning was this question about the board retreating from the first vote to a no-consensus where three wanted no cuts, three wanted three cuts and one wanted one cut. That was unacceptable to somebody. It was unacceptable to the majority of the board. It was not acceptable to the director as the director, or to the assistant director as the assistant director. Indeed, the minister did not even know about it, so it was not objectionable to me. The board felt that proposed decision was not a decision they could all sign their names to. They continued to ponder and to engage in dialogue.

On the afternoon of May 14, there was evidence that a decision which involves the initialling of the review could be reached. There was a choice. It was late in the day. I suppose it could have been because they had been doing other things individually. I suppose it could have been done on May 14, but in the light of the ongoing nature of their own discussions and so forth—and indeed, during this period of time, people asked me to see the film again. Members of the board asked me to see it again. This was not a case where they were saying, “No, we are holding very fast and firm to what we have.” In the full measure of the words they were pondering, or thinking, or evaluating, whatever you want. Indeed, one of the people who went back to see it did not change his mind. One of the people who saw it again or parts of it, apparently did change his mind. On May 15, they reached the decision by signing their names. That was for three cuts.

If we can go back to all of the telephone calls and so forth, the solicitor for the distributor had been authorized by the distributor to negotiate on his behalf. He made several proposals—several, Mr. Davison. I have my hands tied because I have repeatedly said if that solicitor will free me from revealing the contents of his telephone calls to the board, I will do so. But if he will not, then I will not.

**Mr. M. N. Davison:** A good reason for an inquiry.

**Hon. Mr. Drea:** I do not think you would like the results. It might put some—

**Mr. M. N. Davison:** I am not going to prejudge the results of anything.

**Hon. Mr. Drea:** All right. I am just telling you this because I do not want you getting into what went on over the telephone. The ones that have already been in Hansard, I will discuss.

There were many telephone calls over this period of time. There was some correspondence, but bear in mind, it was a negotiating position.

Now we get up to the time of May 14 or 15—May 13, I believe is germane. On May 13, a telephone call was made to Mrs. Brown, the assistant director. It was on the basis of the so-called English cut, which was not a cut at all. That cut was required by law in England or you could not show the film. It is in the Child Protection Act. That cut, and I want to make this clear, was not the one cut when it was three for three cuts, three for no cuts and one for one cut. The English cut was not the one cut. There appears to be some confusion and I have tried to make that clear. The one cut here was not the English cut.

As I have always said, that letter on the English cut was not germane. Just leave that for the moment.

A telephone call to Mrs. Brown from the solicitor indicated he would propose this; but asked her not to propose it to the board on his behalf unless she was sure the board would accept it. If the board was not likely to accept it, she was not to propose it.

The reason she asked him to recall his letter was because the board was not going to accept it. It had never been before the board previous to this. But since she had not conveyed it to the board pursuant to his instructions, until she was absolutely sure they would accept it, she therefore wanted all references in his letter to his telephone conversations with her deleted, otherwise she was going to be put into a position of having to explain about telephone calls where she had received instructions from that solicitor.

He agreed. She sent the letter back. He changed the letter. He sent down the letter. There is a date stamp on it. It came by hand, apparently some time on the 14th. It must have been late in the day because the date stamp on it, and what I referred to in the House, is May 15.

On May 15 they were having a meeting to confirm what was already apparent late on the afternoon of the 14th. So there were two things: One, the letter was never suppressed. The offer of the solicitor was never suppressed. The solicitor might have said to Mrs. Brown or to anybody else: “Offer this. We will accept. Just offer it.” But no, there was a sanction on that.

I can understand the sanction. This distributor had been saying no cuts. But suddenly here is a reference to one cut. I can understand the solicitor's concern this would

broadly interpreted, et cetera. It is quite normal for a solicitor to do this. But you can understand, just as I cannot reveal certain proposals that were made to us, because they were informal and over the telephone Mrs. Brown was faced with the sanction, "Do not put it before the board unless you know the board will accept it."

It was not suppressed. Quite frankly, I think she bent over backwards to protect the solicitor's informal or telephone negotiations with her and with the board. If she is guilty of anything, she is guilty of keeping the solicitor-negotiator's stance intact.

On the basis of the so-called English cut—not being the one cut—had the letter even gone there, it would have been of no help in pondering the matter. Say that letter had arrived on May 7 instead of on May 15, it would not have cleared because the board had already looked at and considered the cut. They knew of the cut that had to be made in England because of the law; that was not the particular one. I hope I have put that to rest.

On the basis of the judicial inquiry into the procedures, these are as laid down. Bear in mind that Mr. Justice McRuer, when he did the whole of the province statute by statute, regulation, et cetera, did not change the Theatres Act one whit or suggest in any of his reports one single thing about the procedures of the Theatres Act.

11:10 a.m.

I don't know why, and I'm certainly not going to try to read that distinguished jurist's mind or the minds of the people who worked with him. All I know is that he touched many things in this province—indeed, he left a great monument—but that act and its procedures he did not touch. The procedure is that a decision is not reached until there is a consensus or a majority—whichever way you want to define it—and you initial that decision.

That decision, by the way, is in writing. It says, "The following will be taken out." I think I sent a copy to the lawyer and I may have sent one to the Leader of the Opposition, a copy of the final letter with the descriptions, the numerical things about the reels, and so forth.

I don't know how a person can be intimidated into putting his initials on the decision. A jury takes many votes, so-called votes, but none counts until the last one. The foreman duly records that as the last one, even if it is hopelessly deadlocked.

Now then, in regard to your reference to that little thing of April 8, 1980, about the

projectionist: That's just a backup system. There are many prints in there, Mr. Davison, many prints, and they give instructions that certain things are to be taken out. That is just a backup system. It has happened, inadvertently, that something that was supposed to be taken out didn't get taken out.

Bear in mind that when the package goes out to the theatres it has stamped on it "Approved by the Ontario theatres branch." The manager of the theatre, in good faith, accepts it.

Bear in mind also that the theatre managers are subject to the Criminal Code, and charges have been laid. They are subject to the Criminal Code. There was a case, some years ago, where an entire print was sent out by mistake. There was the hard-core version, which was sent up from the United States for laughs, I guess, and there was another version which was all right. The wrong one got placed in the carton.

You know, the theatre people had a very good case. They said: "It is not our fault. We have to take some things on faith, and if it has the label of the government on it, who are we to quarrel?" Remember too that they are dealing in volume.

This is a backup system, so that if the projectionist is screening it the final time and sees something in there that he thinks was missed, he reports it to the director of the branch. If it has passed through the board, then it goes out. He is not the censor, just a backup. Perhaps somebody has forgotten to trim out, a mechanical error. That's all it is, a final backup system.

Do you want me to abandon the final backup system and leave the theatre owner, the theatre manager, the theatre exhibitor—I tell you, the theatre exhibitor will be in your office the next morning.

**Mr. M. N. Davison:** That's your interpretation.

**Hon. Mr. Drea:** Well, there are always two interpretations: One is the normal one; one is the abnormal one.

If we have a backup system, it's a backup system. The projectionist has no authority whatsoever in law to do one single thing. He is drawing to their attention that something looks peculiar on this film. He is asking, "Was the procedure carried out?" They say, "Yes, it was." Fine. No more is involved than in saying that if you have a pornographic film sent up on speculation, there should be a backup system to make sure it gets put into the right carton and sent back to the United States or Europe, rather than being put into a carton that says "approved."

After all there is an industry out there that is somewhat dependent on us. They operate in good faith. Particularly dependent on us is the motion picture projectionist in the local theatre, because he is the one who will lose his licence and who will not work again if he shows a film that is not marked "approved by the board."

Also bear in mind that no matter what happens—and I'm sure the member for Kitchener (Mr. Breithaupt) and the member for St. George (Mrs. Campbell) are aware of this—even when the board approves something, the local police and the local crown attorney can lay a charge. It has happened twice in my time in the ministry. Once it happened in Ottawa, and once a private complaint was made which had to be filed by the crown attorney in Sault Ste. Marie. I tell you, when that happens I get phone calls at home, from the poor exhibitor saying, "What have you done to me?"

Somebody in the Sault Ste. Marie area wanted to lay a charge and went to the crown. The crown attorney felt the person had a reasonable right to lay the charge, and so he laid it. The theatre owner can hardly blame the minister. His defence is obviously going to be something else.

That is purely a mechanical backup system to make sure what has been done has been done properly. I do not know why anybody would think that is anything but an attempt at a fail-safe procedure.

We do not just have one film up in that building; there are dozens of films moving in and out. As the member for St. George (Mrs. Campbell) knows, films all come in brown boxes with black belts around them and they have all kinds of labels on them from their previous ports of call. You can get into some difficulties.

On the basis of what I have said to you, Mr. Davison, I would suggest that what you are really asking for is a judicial inquiry, not into the procedures of the Ontario Board of Censors, but as to why the board has these procedures. I think I have outlined the procedures. I do not see what any judge could do. Mr. Justice McRuer, as I said, had every opportunity in the world to investigate this, but he chose, for whatever reason, not to go into it.

If you are telling me you have specific allegations that a decision was wrongfully arrived at, obviously I will have to refer this matter to the chief law officer of the crown for advice. He is the only one who can really determine whether there is reason for a judicial inquiry. If you tell me you do not

want to go that far but you feel uncomfortable, I am prepared to take the Hansard transcript of this meeting, as soon as it is available, and hand it to the chief law officer of the crown, so that on the basis of what has been said here today he can determine whether a judicial inquiry is required or not—whatever you want to do.

**Mr. M. N. Davison:** What I am interested in doing is getting a public forum opened up where members of that board can testify under oath as to exactly what the hell the procedures of that board are, so that people will know what the procedures of that board are. I would also like that forum to be able to look into the activities of the board. The specific context I put it in had to do with *The Tin Drum*, because that is the case which is before us at the moment.

If the minister does not want to request such an inquiry on his own initiative—fine. I would then move the motion I outlined earlier to the committee.

**Mr. Chairman:** Mr. Davison moves that the committee set aside Wednesday and Thursday of next week to inquire into the procedures of the Ontario Board of Censors; that the witnesses give evidence under oath; and that the members of the board, and such other witnesses as the committee determines, be invited to appear.

**Hon. Mr. Drea:** Before the committee discusses that, I hope, since I asked the question, the committee will be indulgent with me.

If I recall, the questions were put to me one at a time, and there was also a request that I answer them one at a time. The first question was whether I thought there should be a judicial inquiry. Then there was an alternative, which will be the committee's decision. I do not want to speak to the alternative.

11:20 a.m.

I specifically asked if the member who is raising this matter has sufficient evidence that there was an improper procedure. If he has, I will convey that to the only person who can convene a judicial inquiry, the Attorney General (Mr. McMurtry), the chief law officer of the crown. I also suggested that if he does not have that data—since he had used the word "uncomfortable"; he said he felt uncomfortable—I will submit a copy of Hansard to the chief law officer of the crown, the Attorney General, for his view as to whether a judicial inquiry into the procedures is necessary.



What I got in answer was a motion that the committee should study the matter. I just want the record to show that.

**Mr. M. N. Davison:** Mr. Minister, if the initiative will not be yours, it must be the committee's. That is the intent of my motion, to make it the committee's initiative.

**Hon. Mr. Drea:** No, no, Mr. Davison. You do not get off that easily.

**Mr. M. N. Davison:** I asked you if you would do something, and your response was in the negative. I am not interested in a paper shuffling match for the next three minutes.

**Hon. Mr. Drea:** What evidence do you have for me to take to the Attorney General of this province that there should be a judicial inquiry? I take it that none is forthcoming—none.

Secondly, if you have this personal feeling, if you are uncomfortable, I said just ask me and I will take a copy of Hansard from this morning's meeting to the Attorney General and ask for his opinion as to whether he, the Attorney General, should order a judicial inquiry into this matter. Since I have received no answer, I take it your discomfort has disappeared.

**Mr. M. N. Davison:** I asked, sir, for your initiative and I do not see it forthcoming.

**Hon. Mr. Drea:** How much more initiative do you want?

**Mr. M. N. Davison:** I want an investigation into these matters in a public forum, and I do not see such a commitment coming from you today.

**Hon. Mr. Drea:** You asked for a judicial inquiry. I said, "What facts do you have?" Silence. I said: "If you feel so disturbed, what facts do you have? I will take it up with the Attorney General and ask him." What more can I do?

**Mr. M. N. Davison:** I spent half an hour outlining my concern to you.

**Mr. Chairman:** We have a motion before the committee. Mr. Breithaupt, on the motion.

**Mr. Breithaupt:** Mr. Chairman, I am interested in the offer the minister has made. Certainly Mr. Davison has outlined his concerns this morning as to whether procedures have been properly followed, or whether certain agendas were set up which might have led to certain results because of the topics discussed just before a vote was taken, or whatever. I have gathered from the response of the minister that he is prepared to approach the Attorney General and ask his

opinion as to whether there is sufficient evidence for a judicial inquiry. If the minister is prepared to do that, then we should proceed to have that done.

I do not know how long that would take, of course. With the last week of the session upon us, the only opportunity we would have to deal with this matter—and we would have to change the estimate schedule—would be next week. We may not have a reply in time to accommodate that.

However, the estimates are scheduled for Wednesday and Thursday of next week, and I would think, knowing the urgency and the interest felt by the members dealing with this matter—it is one of concern—that we could probably have a reply by then from the Attorney General as to whether, on this evidence or on other evidence which may be forthcoming or available, such an inquiry could be held.

I have no objection to changing the timetable with respect to how the hours are used. If it is the wish of the committee to bring the public entertainment vote, vote 1504, before the committee next Wednesday and Thursday, that is fine. We can reschedule things however they want. But I think we have an obligation to let the minister proceed as he said he would to advise the Attorney General of the concern of members of the committee and, to repeat, to provide him with a copy of Hansard and the comments that have been made, and find out what his opinion is.

**Mr. Chairman:** I would say for the benefit of the members of the committee it is not likely that the Hansard for this committee will be out until Friday afternoon. That's the normal time frame for committees.

**Mr. Warner:** On the motion, Mr. Chairman: I listened very closely both to what my colleague from Hamilton had to say and to the minister. It would appear that while both gentlemen are aware of the details surrounding the whole issue of the film, *The Tin Drum*, they seem to have different interpretations of the facts they have at hand.

There is sufficient doubt in my mind as to how the board functioned in this particular instance. I don't know about other instances in the past, but at least over the issue of *The Tin Drum* I think it would make good sense for us to have an opportunity to go through the details with the board members here, under oath, as protection for them, of course.

As my good friend from Kitchener has said we do have a time problem, as this session is ending. I think that it would be a good



procedure for this committee, if the committee members were willing, to request the Attorney General's office to have someone from his office in attendance. It doesn't have to be the Attorney General, obviously. We don't ask the impossible. But someone from the Attorney General's office should be in attendance at that time so that we could, following whatever transpires here, have the opportunity to seek a legal opinion from the AG's office how the matter might be pursued, if necessary, from that point. At least, that would give us an opportunity to be directly involved before the session ends.

To try to go the other route—I think the time pressure is such that it just wouldn't happen. We would be looking at a report some time in the fall. I think it makes more sense to do it this other way, with the proviso that we invite the Attorney General's office to send someone here to monitor what goes on. Then, perhaps, following our sessions the committee should decide whether they wish to pursue it further or not.

That initial stage, I think, would be helpful to all of us. I for one certainly would feel more comfortable if we could question directly, the members of the board with respect to their activities, since there seems to be a clear difference of opinion on the facts between the minister and the critic from my party.

**Hon. Mr. Drea:** I must say, in all fairness, I don't see any differences. I asked, "Did I threaten them?" "No." "Did I manipulate them?" "No."

I told you, day by day, what the two decisions were. I just want to make it very clear that there is no misinterpretation of the facts. I have laid down the facts. There are two pieces of paper with initials on them—the decision and the review of the decision.

**Mr. Warner:** Mr. Chairman, I did not suggest misinterpretation. I simply said, as I think I recall the Speaker in the House having said on occasion, "There appears to be a difference of opinion." You have the facts before you; my good colleague has the facts before him. And you each have different interpretations of those facts.

**Hon. Mr. Drea:** There is no interpretation; I have laid them all out, I haven't interpreted anything.

**Mr. Warner:** Mr. Chairman, I was speaking to the motion. I think it makes good sense.

**Mr. Chairman:** Fine. Mr. McCaffrey, on the motion:

**Mr. McCaffrey:** Just briefly to the motion: On the basis of the discussion that we have

had here this morning between Mr. Davison and the minister and another fairly detailed discussion on this particular film and the dates when the votes—straw or otherwise—took place; and on the basis of the equally lengthy discussions that took place in the Legislature, where those same dates were outlined and there was general and broad discussion, I see no reason at all to carry on with a judicial inquiry.

11:30 a.m.

However, I sense that there is a note of urgency about this, based only on the fact that we may not be in session within the next week or 10 days. I don't see any urgency based on what I see to be the substance of the details. The minister has suggested as a compromise—if I can use that word—that the Attorney General or his staff read the transcripts of this most recent outline of the dates and details sooner rather than later. And that we should weigh the different or other opinions seems not unreasonable.

I can't vote for the motion without having taken that next step to have the Attorney General's office look it over. That seems to me reasonable and fair.

**Mrs. Campbell:** Mr. Chairman, it seems to me that for a long time we have had a recurring discussion about this particular board. I have come to no conclusions as a result of the discussions today.

What bothers me is I believe that members of the public are concerned. It may well be that their concern is more that they don't know what goes on than about what does go on. I think that we might do a service to the board and to the industry if we were able to apply ourselves to a real understanding of these procedures.

I'll be frank. Speaking only for myself, a judicial inquiry, it seems to me, would be something, if in fact it did flow, if it were to flow from a further, more in-depth kind of discussion ourselves. I am not accepting any of these statements which have been made as fact or otherwise. But I think the air needs to be cleared.

I have received letters, not just about The Tin Drum, but for several years past, and the minister knows it. If we are getting these kinds of letters from the public in protest, whether those letters are right or wrong I think it's important that we, representing the public, should look in greater depth at this particular board. It's in a very sensitive area.

I have not, like others, seen the film; neither have I read the book. So I have no comment whatsoever about the film or about

any of the other films about which I have received protests, I just think for the sake of the public that we should, ourselves, look at this. Perhaps we can understand better what goes on there and be in a better position to explain to others what goes on and why.

So I guess my support would go to the motion that we do set aside time to have discussions with members of the board so that I, at least, can become more knowledgeable—everybody else may know all about it, but I don't—and can therefore be more useful to my constituents. The people who write to me are not just from St. George. I receive letters from all over this province.

I think the case is that the public has a right; I guess that's the position I'm in. Without taking any particular point of view at this time, I would tend to support the motion for setting aside time next week, not as an inquisition however, but as a discussion and inquiry—though I think it is important that people have the protection of the oath—but just to become more knowledgeable personally.

**Mr. Swart:** I am somewhat reluctant to to have this investigation supersede consumer prices during next week.

**Hon. Mr. Drea:** I tried to save it. I tried, don't blame me.

**Mr. Swart:** I also recognize the real problem with regard to censorship of The Tin Drum and all other kinds of movies. Having said that, I am going to support the resolution. I think the two proposals are very different. The judicial inquiry would just look at it in legalistic terms. What my colleague proposes is much broader. I would think we would discuss such issues as how the Ontario Board of Censorship functions generally, not just the procedures.

I would like to determine how much the personal opinions of the board members enter into the way they vote, rather than the general policy under which they operate. I think the timing is important as well. If we are going to deal with this issue, if we are going to take a look at how the board operates, it should be done at this time. The climate is right for it. Therefore, it should be done before the end of the session rather than let it go until fall.

For these reasons I think the motion by my colleague is appropriate and timely. I am willing to forgo my personal reservations and my personal desire to spend the time next week looking at prices. There will be another forum for that whether it is question

period or whatever the case may be. We should deal with this issue now.

**Hon. Mr. Drea:** Don't blame me for it.

**Mr. Swart:** I did not make any suggestion that you were to blame.

**Hon. Mr. Drea:** Well, before you did.

**Mr. Swart:** I blame you for not doing anything about it, but I do not blame you for this.

**Mr. Williams:** It is interesting that differences of view have emerged on the way we should be going about trying to deal with the main issue that I thought was raised here this morning by Mr. Davison. I think he said quite explicitly that his concern was not with the matter of censorship per se, but rather with regard to the procedures that are used by the Ontario board of censorship. Is that not correct, Mr. Davison? Your main concern is with regard to the procedures and activities.

As he stated, he has expressed those concerns for some time. Out of his concerns have arisen concerns of my own by reason of the nature and manner in which he presented his concerns to the committee. While I listened very carefully to the concerns he expressed, I could find nothing that would indicate they were based on fact. They seemed to be fashioned totally out of conjecture.

11:40 a.m.

When pressed by the minister to be explicit and to give us facts that would substantiate his concerns, Mr. Davison chose to be silent on the matter. He did not, to my mind, introduce any circumstantial evidence that would even suggest there was anything amiss with the procedures of the board. What he portrayed this morning I can only attribute to flights of fancy or his own personal views and biases that, as I say, cannot be in any way based on fact. If he had introduced fact I think we would have another situation before us which would be quite serious. I suggest at that time, and at that time alone, we could relate to a proposal for a judicial inquiry as a proposal that should be treated seriously.

At this stage it is not only premature to pursue that proposal seriously, it would be totally inappropriate. We have to have something substantive to get our teeth into to consider that proposal seriously.

In view of the fact Mr. Davison did not make the explicit charges the minister invited him to make, I think we have to discount that approach to the problem. As the minister has suggested if it is strictly a mat-

ter of Mr. Davison feeling uncomfortable about the way the board has handled its procedures, not only with regard to this film but in general, then the offer of the minister to have today's Hansard reviewed by the chief law officer would give him some satisfaction in relieving his concerns and uncomfortableness. It seemed an appropriate gesture by the minister but it seems Mr. Davison felt he did not want to take up that offer.

The member for St. George, contrary to the views I thought had been expressed by her colleague in the Liberal Party, felt we should, at this time, go to the lengths proposed by Mr. Davison, short of the judicial inquiry process. On the basis of a number of letters and telephone calls, and whatever the public at large has been presenting to the news media, I thought this dealt with the censorship issue, and not the procedural issue that seems to be the subject matter of the discussion here this morning. I have not seen any letters, correspondence or anything else from the public that would indicate it was distraught with the procedural aspects of the board, with the manner in which it made its decisions.

My impression was the public was dealing with the principle of censorship or no censorship. It seemed to me the member for St. George was addressing her remarks to that aspect of the matter which, again, I did not think was the main concern we were dealing with this morning.

Having said those things, it seems to me the minister's offer was not unreasonable. I thought Mr. Breithaupt, as well, saw the wisdom of a conciliatory effort by the minister in an attempt to put at rest any uneasy minds within the committee. I would hope that point of view would prevail in that we would address ourselves further to this matter in that fashion, and failing the members being satisfied to have this review and hearing perhaps from officers of the crown next week, there is always an opportunity when the estimates continue in the fall to deal with this matter in another way, if it is the direction of the committee.

It could be approached in stages if necessary. The proposal put forward by the minister would be a first stage that might satisfy the members of the committee without making it necessary for the committee to summon before it, the members of the board for discussions and considerations.

On the basis of those views, I am obviously opposed to the proposal put forward this morning by Mr. Davison.

**Mr. Chairman:** I have no further people on my list.

**Mr. Warner:** On a point of order, we request the 20-minute break which we are entitled to under the division.

**Hon. Mr. Drea:** Before you do could I raise one point? It has been brought to my attention that there was an indication the distributor of the film might want to proceed on the procedural matter in divisional court. All I know is that was an indication that was conveyed by him. Whether that is the route he will choose, I do not know. If that eventuality were to take place—it was in the mind of the person—it might have some bearing on the particular route the committee chooses in the next two weeks.

**Mrs. Campbell:** Speaking to that point, I recognize that what Mr. Davison has said comes out of specific concerns he has had about the handling of that specific item. I do not know enough about it to come to any conclusion in my own mind, even as to proceeding to look at that.

What I was really addressing was the broader issue for the benefit of the public which has concerns about the procedures and I think, the secrecy of them. I do not want to get into the middle of a matter which is before the courts. However, I do not think we can call it sub judice until some action is actually taken. If we could ascertain whether that has happened, it seems to me we could still look at and talk about the procedures, the guidelines, how they come to their conclusions, that sort of thing, without in any way impeding or getting into the question of that specific item. I am personally more concerned about the generalities than about the specifics.

**Hon. Mr. Drea:** That is not the motion. Mrs. Campbell, I draw to your attention—that is why I raised the question of the divisional court—that is not the motion. The motion calls for people to discuss this one, those dates, all the things under oath, et cetera.

**Mrs. Campbell:** May I have the motion read back? That was not my understanding of it.

**Mr. Chairman:** For the purpose of the committee, I will read the motion.

"Mr. Davison, Hamilton Centre, moved that the committee set aside Wednesday and Thursday of next week to inquire into the procedures of the Ontario Censor Board, that witnesses give evidence under oath, and that the members of the board and such other witnesses as the committee determines be invited to appear."



I think the onus in such a case would be for the chair to rule if at any time any of the members endangered themselves by becoming sub judice with relation to any court case. I do not see anything in the motion to—

**Mr. M. N. Davison:** It is the minister's interpretation of the motion.

11:50 a.m.

**Mr. Breithaupt:** If there is going to be a few moments' break now as members are gathered, we could ask the solicitor for the distributor if it is his intention to proceed. That might be useful for the members to know.

**Mr. Chairman:** Would the minister have a member of his staff call him?

**Hon. Mr. Drea:** I am not going to telephone him, but I guess my solicitor can phone him. Mr. Ciemiega, will you try to reach him? My chief solicitor, Mr. Ciemiega, will make an effort to find out.

**Mr. Chairman:** We will reconvene at 12.10.

The committee recessed at 11:52 a.m. and resumed at 12:10 p.m.

On resumption:

**Mr. Chairman:** Is everyone ready for the vote?

**Mr. Sterling:** Mr. Chairman, before we recessed, didn't Mr. Breithaupt ask a question about whether or not civil litigation is involved, or some kind of litigation? I understand from the minister, having talked with him during the break, that they were unable to contact the solicitors for the distributors of The Tin Drum, but I understand the legal situation is this.

There is a possibility that those legal representatives might be able to go to division court and have the procedure reviewed, that the court has the power. I do not know whether this legislative committee has the power to make that review, and what goes on in this committee might hinder that process.

Be that as it may, I just want to make it clear—and if you want to go ahead and vote on this now, that is fine and dandy by our caucus. We have stated our position clearly. We are not in favour of this motion. We do not really think that the question here is about the function of the Ontario Board of Censors. It is a question about The Tin Drum that the opposition party really wants to bring on.

It really does not matter whether we review the board's procedures now or whether we review them in the fall. As far as I am concerned, the censor board could be reviewed at that time, when this issue is past and gone.

**Mr. Chairman:** I am going to call the vote.

**Mr. Williams:** Mr. Chairman, what happened to the—

**Mr. Warner:** A point of order, Mr. Chairman: We had the discussion on the motion. You indicated there were no more speakers on your list and you asked for the vote. At that time I requested the 20-minute recess to which we are entitled. We have had that. The proper procedure at this point is to actually call the vote.

**Mr. G. Taylor:** We adjourned. We did not call the 20-minute break.

**Mr. Warner:** No. I am sorry, but we have debated the motion and there were no more speakers. We now call the vote.

**Mr. Chairman:** I am sorry, Mr. Taylor, but I did state that we would recess for 20 minutes, after which time we would take the vote, and that I had no further members on my list.

**Mr. Warner:** Agreed.

**Mr. Chairman:** I have three substitutions: Warner for Lupusella, Breithaupt for Roy, and Davison for Ziemba. Thus, all the members who are sitting at the tables here in committee have a right to vote. I will read the motion.

**Mr. Williams:** Mr. Chairman, I have a question. I thought at the time we adjourned for the 20 minutes the staff solicitor was going to—

**Mr. Warner:** There is no point of order. Call the vote.

**Mr. Chairman:** That is not a point of order. The staff solicitor did report to the minister and Mr. Sterling reported on that finding. We do have that information. It has been given to you by Mr. Sterling.

**Mr. Sterling:** On a point of order, when were those substitutions given to you?

**Mr. Chairman:** Those substitutions were given to us at the beginning of the meeting, in the first part of the morning. Mr. Breithaupt has been substituting for Mr. Roy throughout the estimates, if that is the one you are questioning.

**Mr. Sterling:** And those are in writing in your hands?

**Mr. Chairman:** We have two in writing, and Mr. Breithaupt has been substituting all along for Mr. Roy.

**Mr. Sterling:** Okay, fine. Let us vote.

**Mr. Chairman:** Mr. Davison has moved that the committee set aside Wednesday and Thursday of next week to inquire into the



procedures of the Ontario Board of Censors; that the witnesses give evidence under oath; and that the members of the board, and such other witnesses as the committee determines, be invited to appear.

Motion agreed to.

**Mr. Warner:** A point of order: Just prior to the vote, I did mention I thought it would be appropriate to invite someone from the Attorney General's office to attend while we were having deliberations. I do not think I need a formal motion, but would the committee agree that we might invite the Attorney General's office to have somebody in attendance?

**Mr. Chairman:** I can instruct the clerk to invite the Attorney General's office to send someone here. In the past, as you know, we have had a number of incidents where that sort of a motion was passed by a committee. There is no way for us to force someone from another ministry to appear.

**Mr. Warner:** No, no, that is not my intention. I just felt we should invite someone.

**Mr. Chairman:** We will make that request.

**Mr. Warner:** If they choose not to come, that is fine, but I would like to invite the Attorney General to send someone to sit in during the deliberation.

**Mr. Chairman:** Is that the wish of the committee?

Agreed.

**Mr. Chairman:** Fine. The clerk will write to the Attorney General on that topic.

Are there any further matters under this vote? **Mr. Minister,** I believe you wanted to deal with a few other matters that **Mr. Davison** had raised.

**Hon. Mr. Drea:** I do not think so.

**Mr. M. N. Davison:** I have not quite completed my leadoff; however, having taken so much of the committee's time already today, perhaps I will just outline, by way of a brief summary, what I and my party intend to raise. I hope it will take no more than four or five minutes.

As I outlined on Friday in the brief time I had then, there are two other areas involving public access to information on which I think it important for, if not incumbent upon, the government to act. They are two that really concern me and for which I think this minister should accept some responsibility.

Number one is the registration of shareholders of corporations in Ontario. I think the public has a right to know not just who the directors of a corporation are, not just

who the front people in a corporation are, but who owns the company, who the shareholders are. That is an important initiative for the 1980s which I would like to see the minister adopt, so the public will have an opportunity to know who is making decisions in this province. At the appropriate vote I will raise that in some detail.

The other area of access to information that I think is important is this: The time has come in Ontario when we should move along the lines of New York state and California and register lobbyists.

The reason I raise that under the minister's vote is that, to some extent, the concerns I have deal with corporate and professional lobbyists who contact members of the assembly. There is legislation in other jurisdictions in North America to provide for such registration so the public knows who has the ear of elected officials. I will raise that in some detail when we come to the appropriate vote.

**Hon. Mr. Drea:** Excuse me. I feel ambivalent about this. I would think that type of legislation would properly be under the—

**Mr. M. N. Davison:** Legislative Assembly Act?

**Hon. Mr. Drea:** Yes, or under the Ministry of the Attorney General. I am not talking about the merits or the demerits of your suggestion. I just wonder why line two is that this should be administered by this minister. I have huge areas to administer now.

**Mr. M. N. Davison:** No, it is not a question of your administering it. The reason I want to discuss it in your estimates at the appropriate time is that we are dealing with the Ministry of Consumer and Commercial Relations and I want to discuss it in terms of its relationship to this ministry.

**Hon. Mr. Drea:** That is what I was concerned about. Why put the legislation in here?

**Mr. M. N. Davison:** No, no.

**Hon. Mr. Drea:** I would think if there is merit in it, you would want it to be all-embracing, and this would be restrictive.

**Mr. M. N. Davison:** I would prefer to see it in the Legislative Assembly Act.

**Hon. Mr. Drea:** Okay

12:20 p.m.

**Mr. M. N. Davison:** Again, I will deal with that in some detail later.

The other area I want briefly to point out now for discussion later in the estimates is the whole issue of prices, in which **Mr. Swart**

has been so active the past year and a half. I think it is an exceedingly important one.

Apparently there was an editorial on CBC radio this morning. If I can condense it somewhat it basically said, "Swart is right." Swart is right about prices. It is time the minister finally recognized that.

I can recall my involvement two years ago with my resolution for an Ontario food prices review board. I can recall the discussion in the assembly when we tried to provide consumer legislation with teeth and I recall the blocking of that resolution by the Conservative Party after the minister spoke against it.

I think it is time we realized the jig is up. The defence originally was that it was a federal matter and we did not have jurisdiction over all these prices, et cetera. They had a very complex, legalistic argument which was a smoke screen for inactivity.

What happened in the end was the Attorney General was asked for an opinion on it and he said, "Swart is right." Well, Swart is right. I think that is going to have to be an important focus of these estimates. I think we are going to want to extract from the minister and his government a pledge finally to do something about food prices, other than wasting public funds on yet another monitoring system, as was the response.

The argument of prices does not stop at food prices. It only begins at food prices. Housing is one of the most important commodities in the province for the lives of ordinary people. I think there is a role for the Ministry of Consumer and Commercial Relations and the minister to step in as advocates on behalf of consumers to see that something is done in terms of the affordability of housing by way of interest rates and by way of a number of other channels. Clearly the Minister of Housing (Mr. Bennett) is not moving with any great or blinding speed.

When we come to areas of a more technical nature, I am going to want a discussion with the minister about asbestos, and about the bizarre circumstances we found ourselves in at the end of March and beginning of April with the Ministry of Education taking one position about asbestos and your ministry taking an absolutely different position. That is a question of some disagreement that we will be able to deal with.

One concern I want to raise with you when we come to the part of your legislation that deals with landlords and tenants under the Residential Tenancies Act is the repugnant mood or position taken by a group of landlords. The one that comes to mind is the

Lambton County Landlords Association in regard to welfare tenants.

**Hon. Mr. Drea:** I am sorry, but could you elaborate on that?

**Mr. M. N. Davison:** I think I will have to elaborate because the concern I have is: where was the minister on that issue?

**Hon. Mr. Drea:** I do not even know what you are talking about.

**Mr. M. N. Davison:** It was in a number of places. What the landlords were saying, and your staff can bring you up to date before we come to that vote, was that when they had tenants who were on welfare—

**Hon. Mr. Drea:** Could I interrupt for a moment? I do not want to shirk responsibility but, in the interregnum until the Supreme Court of Canada deals with the Residential Tenancies Act and the Landlord and Tenant Act, all landlord and tenant matters other than rent review are under the jurisdiction of the Attorney General. That is one of my problems. I would love it to be in my ministry, believe me.

**Mr. M. N. Davison:** The reason we have this problem is because the government would not listen to us a long time ago when we asked you to refer the question of constitutionality, and I am sure you will have—

**Hon. Mr. Drea:** Mr. Davison, we had two sets of constitutional experts at the very opening of those committee hearings; one set was from the Ministry of the Attorney General—

**Mr. M. N. Davison:** One was right and one was wrong.

**Hon. Mr. Drea:** The second one was an independent solicitor of some distinction who was retained by a group of tenants, I believe. Both representatives said right from day one of those committee hearings that in their view that bill was constitutional. Your fellow member, Mr. Renwick, raised that point on day one. It was tested. Okay? Subsequent to the passage of the bill a group, not the government but a group—I forget its proper name but I can document it—served informal notice that it intended to test it in the courts.

At that time the decision was made by the Attorney General that the matter go to the courts—provisionally for those people because all their costs were paid and continue to be paid as a constitutional question. The courts came down with a decision. The Attorney General made another decision, which was to appeal that to the Supreme Court of Canada. A number of provinces feel strongly about the constitutionality of

the Ontario bill and have intervened on the side. Do not say nobody paid any attention to your warnings because they did. There were two sets of constitutional experts in that committee on day one, and both delivered—

**Mr. M. N. Davison:** You will recall that Mr. Renwick, at that time, suggested it should be referred as a constitutional question.

**Hon. Mr. Drea:** Mr. Renwick is the one who had it referred to an afternoon session where constitutional lawyers came from the Ministry of the Attorney General, as well as a distinguished professor from the University of Toronto Law School. Am I right, Mr. Breithaupt?

**Mr. Breithaupt:** As I recall it.

**Hon. Mr. Drea:** Yes. He was retained by the group, not by the government, not by the committee—

**Mr. M. N. Davison:** You are speaking of Professor John Laskin. I quite recall the point he made and it is absurd to paint it in such black and white colours.

**Hon. Mr. Drea:** Both sets of experts, one independent and one who was charged with the responsibility for the government, said the bill was constitutional. We proceeded onwards. Then the courts found it was not constitutional. Courts often do not accept the initial opinions of—

**Mr. M. N. Davison:** This is part of the pattern. Obviously it is quite within the minister's responsibilities to discuss legislation that is his. The Residential Tenancies Act is his.

**Hon. Mr. Drea:** Yes. But until that comes out of the court, I ask you—

**Mr. M. N. Davison:** The minister paints himself to be a consumer champion who, on frequent occasion, says: "It does not matter if it is in my jurisdiction or not. This is what I am going to do because this is the right thing to do, et cetera."

**Hon. Mr. Drea:** I am telling you, Mr. Davison, you made an accusation that it was my responsibility and I did nothing. I am telling you straight out that the Landlord and Tenant Act, at the moment, is under the administration of the Ministry of the Attorney General.

**Mr. M. N. Davison:** You can read Hansard for yourself when it comes out on Friday. I did not, at any time, say you have a responsibility for the administration of the Landlord and Tenant Act.

**Hon. Mr. Drea:** You said I had a responsibility to intervene on Lambton, which was a Landlord and Tenant Act matter.

**Mr. M. N. Davison:** Yes, I believe you do have a responsibility as the Minister of Consumer and Commercial Relations to intervene on behalf of tenants and consumers.

The final area I want to raise by way of providing you with some advance information is a system in the United States known as the NEIS system, the National Electronic Injuries Surveillance system. I think consumer safety is an important area of concurrent federal and provincial jurisdiction on which we have not been moving very quickly in this province.

I am sure the minister is familiar with the system. It involves monitoring emergency rooms in the hospitals.

**Hon. Mr. Drea:** No, I am not familiar with it, Mr. Davison. I am sorry.

**Mr. M. N. Davison:** I will have an opportunity to explain it to the minister. The NEIS system monitors the cause behind injuries suffered by people going into the emergency rooms of hospitals in concurrence with a coding manual. The long and short of it is, the purpose of the program is, if they identify over a period of time some consumer product that presents a physical hazard to people, they can move in on it.

**Hon. Mr. Drea:** Okay, now I know what you are talking about.

**Mr. M. N. Davison:** I think that is an interesting idea that the minister should be championing in Canada, either with his colleagues at the provincial level or with the federal minister. In any event, if they are unwilling to move something could perhaps be brought in in a modified form in Ontario. I hope we will have an opportunity to discuss that.

**Hon. Mr. Drea:** I am sorry. I misunderstood. I thought you meant monitoring the emergency rooms. Incidentally, that was brought up at the last federal-provincial ministers' conference in Newfoundland. There was not only that question but other monitoring. That was one of the difficulties expressed by Mr. Lawrence, the minister at that time. I have not had an opportunity yet to discuss it with Mr. Ouellet, the new minister. It was the question of Allmand in this regard. There was growing concern in the whole field of hazardous products. They were operating on the basis of evaluating, design, et cetera. Out there it was very difficult to get data.

What had brought it about was the bottle.



**Mr. M. N. Davison:** The soda bottle.

**Hon. Mr. Drea:** Yes, the bottle. When they were pressed by both the media and the industry as to where the injuries had taken place they knew about the one in litigation because that was somewhat prominent. I think they knew about somebody in Mr. Breithaupt's area and that it had happened in a store. It had happened with a large number of people. The obvious question was, "Who went to hospital?" They thought they could do it with the OHIP codes, but the OHIP code just showed laceration, or whatever the treatment was.

I would be very glad to discuss it. If you would hold it over to the fall, I—

**Mr. M. N. Davison:** That may well be when it comes up. NEIS is quite extensive. This, for example, is the coding manual.

**Hon. Mr. Drea:** Yes. Okay.

**Mr. M. N. Davison:** It is almost an inch thick.

**Hon. Mr. Drea:** If I could finish I think it might be advantageous to hold it over to the fall. In any event, before this Legislature reconvenes, there is going to be another federal-provincial meeting of ministers. Hopefully some progress has been made. It was left entirely in the hands of the then minister who announced his intention to proceed because he had a vested interest in the bottle question. He was going to proceed. What then occurred, I realistically do not know.

Secondly, I think that there is a growing concern—perhaps we can get into it tomorrow on some of the commercial votes—but there is a grey area which has emerged since the apples case and the beer case.

**Mr. M. N. Davison:** I was just going to come to that. You headed me off at the pass.

**Hon. Mr. Drea:** There is a grey area in the courts on jurisdiction. It depends who you listen to.

**Mr. M. N. Davison:** Jurisdiction is sometimes like a vacuum.

**Hon. Mr. Drea:** I want the jurisdiction cleaned up straightly and firmly. I do not believe in playing jurisdictional games. In the past it has been a matter of negotiation because the interpretation was that whoever staked out the territory had the territory and one negotiated back and forth. Court cases place some doubt on the validity of that approach, although the court cases are not final. That is the problem. Another court case would come where they would really write—they go up to the line, but not quite.

The other problem is that one cannot get much interest in it at the moment across the provinces, or with the federal government, because there is the supposition that this is a very good area—I do not question it—in constitutional reform where initial progress may be made which would be very helpful to constitutional reform overall. The problem is knowing how long constitutional reform, even at a steady progress, may take, whether it is going to be a year, two years, three years, or somewhere in there.

I would like to try to work out, even if it is on a temporary basis, clear-cut jurisdiction in terms of who is going to do what until the thing is resolved properly in the constitution. That puts additional emphasis on that because one gets into a number of other areas.

12:30 p.m.

One of the problems is that last fall everybody was concerned and wanted to move and sift out the jurisdiction on a proper responsibility basis, rather than one of continuing controversy.

In fairness—I always say this Mr. Allmand, prior to the election of a new government in May 1979, for the last six months of his portfolio worked very diligently, at as fast a pace as the coming together of 11 different groups with varying interpretations of jurisdiction would permit. Bear in mind too, before the courts put some impetus behind it, Mr. Allmand was working on that as well.

As to where it stands now, I have to tell you I honestly don't know. Part of the other problem, of course, is that the present minister, in fairness to him, was almost totally occupied until after May 20 with what he considered to be his priorities, and rightfully so.

**Mr. M. N. Davison:** Just to conclude my opening statement, I think there is an important role for the Minister of Consumer and Commercial Relations, not as a referee, not as somebody who does not jump in, but as an advocate, as a defender of public interest, as a defender of consumers, perhaps as a crusader on behalf of consumers. I do not see a hold-back approach called for.

Frankly, I think this minister has the potential to do that job. I am unsure as to why he has not taken that up with more enthusiasm, more creativity, but I think the potential is there.

There are a wealth of people in this province, Mr. Minister, who would be very supportive of you in these cases where you champion the cause of the public's right to information, where you champion the cause,



in a very aggressive fashion, of consumers' right to safety from hazardous products. There would be tremendous support if you were to move aggressively, with some vigour, on the issue of prices. In all of those fields, there would be tremendous support.

There would be a lot of support within the Legislature from the official opposition critic and from myself. We would be quite happy to work through new things with you. We would be quite happy to play a supportive role if you were to take on such challenges as are before us in the field of Consumer and Commercial Relations. I think there is potential. It would be a shame not to see that potential realized. In the end, the only people who will really lose are the consumers of the province.

You can expect that we will prod you and prod you hard when you seem to be moving too slowly, when you seem to be taking a narrow view of the problem, when you are not creative in seeking solutions, but, sir, we will support you wholeheartedly when you do take up consumer causes.

I look forward to the opportunity of spending 25 hours talking about some of the possibilities.

**Mr. Chairman:** Mr. Davison, there are not 25 hours left.

**Hon. Mr. Drea:** You took a whole batch of them out today. How can I talk about all these things that are important to so many people when we have been talking about things that are not very important to very many people?

**Mr. Breithaupt:** I have nothing further this morning, Mr. Chairman, with respect to the opening vote. I am quite prepared to have vote 1501 carry.

**Mr. Chairman:** Before we pass it, I had asked Mr. Wells a number of questions on a particular issue that does come up under this vote and Mr. Drea had addressed himself to them in the House. I believe he has someone here who would like to answer some of the questions I raised concerning Garfella Investments.

Mr. Davison, would you be kind enough to take the chair for a couple of minutes?

**Mr. M. N. Davison:** I would be happy to take the chair.

**Hon. Mr. Drea:** I think Mr Simpson could assist the committee

**The Acting Chairman (Mr. M. N. Davison):** Mr. Simpson, would you come forward?

12:40 p.m.

**Mr. Philip:** The issue concerned the problem of the end-run around condominium conversion bylaws. Particularly active with this is a lawyer by the name of W. Von Teichman whom the minister had a number of uncomplimentary words to say about, words that I share.

The problem as it now exists is that, with the passing of the Condominium Act, there is an attempt to plug the hole whereby someone could sell a percentage interest in a building with an allocation of an apartment. The particular problem I was concerned about was that we have a number of buildings that were in the process of being transformed, if you like, in a manner that was legal until the Condominium Act was enacted. These people find themselves in minority positions in the buildings and they are complaining about the principal interest holders, namely the original landlords, creating monsters for them in which they have no control over the maintenance of the buildings. All they have are increasing bills.

I asked the minister some time ago and we had a meeting with him, particularly in relation to the Arcot, Tandridge project but also in relation to 10 Garfella Drive, as to whether some action could be taken to grandfather those existing buildings that were in the process of transformation. I believe some work has been done and that one has been grandfathered when Scarborough passed the bylaw—

**Hon. Mr. Drea:** It wasn't general. It was just for that particular location.

**Mr. Philip:** Just for that one particular building. Yes.

I don't have my file on this with me today because I didn't think we would have time to get around to it but I believe the minister said there were 14 buildings that were somewhere in the process of conversion at the moment.

**Hon. Mr. Drea:** No, just to recall the details, I said in the beginning after the events at 3311 Kingston Road, which was the start back in 1975, that at that time before we brought it under control I think there were as many as 16 attempts. A lot of those disappeared except for the one in Scarborough, the ones in Etobicoke and some in Thunder Bay and East York, et cetera. They all went to a certain stage and whatever happened to them, interests in common or whatever, they never surfaced again.

**Mr. Philip:** Are we talking about only three buildings now?

**Hon. Mr. Drea:** No, I do not want to confuse you. Starting from those three,

which have remained, there were various forays into other areas. Mr. Simpson can trace what is there now.

**Mr. Philip:** If I understand what the minister said in the House during the estimates of the Ministry of Intergovernmental Affairs, von Teichman, in spite of the Condominium Act, is still going ahead with trying this runaround of condominium conversion bylaws and is acting as the solicitor for some people who are selling a percentage interest in the building.

**Hon. Mr. Drea:** He is trying. We are now convinced that the present Condominium Act with those amendments does prevent it. I thought it might be important in these estimates since the Condominium Act is here. There is double policing. The problem is that first of all one comes to a test of the Landlord and Tenant Act with security of tenure, and then at the same time one is into a test of the Condominium Act. Both are really in this sphere and we thought it might be of some value to have it discussed here.

There are other remedies which I am convinced must be taken particularly with regard to the Real Estate and Business Brokers Act. Even after all of that is done, if that does not work there may have to be something in the municipal field, but we would like to get at it right now, in the sphere of responsibility of this ministry, to isolate the loopholes. If we can do it without amendments to other acts, so be it. If we cannot, at least we know in the other acts the very narrow things that we have to do. I think it would be foolhardy to attempt to do it all under the Municipal Act or all under the Real Estate and Business Brokers Act.

I just wanted to put it in perspective, that is all. Mr. Simpson, who has had this on-going since about 1975, can put it in perspective.

**Mr. Simpson:** Mr. Philip started off and then the minister commented so I have sort of lost track. Let me just talk about 10 Garfella for a moment.

As Mr. Philip said, we had a meeting in our offices the evening of last November 14, I believe it was. There were representatives there from Arcot, Tandridge and 10 Garfella. Three home owners, I believe, three purchasers of interests in common in 10 Garfella, were there.

At that time we talked with the minister about what we might do and two propositions, as I recall, were put on the table. One was the proposition for an exemption under

section 59 that would grandfather this proposition and let the sales proceed. The other proposition and possibility was conversion to a condominium.

Forgive me if I am repeating things you already know, Mr. Philip, I am back to the letters and so on.

**Mr. Philip:** I think it is useful for other members of the committee to have a review.

**Mr. Simpson:** Okay. There were two things that had to come out of that meeting. One was a clear direction to Mr. von Teichman to give a response in terms of the nonresident owners, where they would stand and what they would be prepared to do, if there was an attempt at conversion. The second thing was a letter to Alderman David Robertson of the borough of Etobicoke to summarize the meeting and ask for a sense of direction. I will just read the key paragraph:

"Before requesting the cabinet to consider an exempting regulation as is provided in the act, I would ask that you bring this matter before the municipal council for its views to be expressed in the form of a resolution of council. Specifically I would like the resolution to include a statement that council either approves or does not approve of the exemption and, if it does approve, any conditions that it feels should be satisfied before an exemption is granted.

"I include the matter of conditions because I am aware, as of course you are, that the official plan of the borough of Etobicoke contains a part dealing with the conversion of rental buildings to condominiums. Mr. von Teichman, for his part, sent to us letters in respect of 10 Garfella and Arcot and Tandridge dealing with the prospect of conversion and what the nonresident owner would be prepared to do."

**Mr. Philip:** What was very interesting about that, if I may compliment the minister on his foresight, was that he predicted at that meeting that Mr. von Teichman, who swore up and down he had nothing to do with 10 Garfella, would suddenly become the solicitor for 10 Garfella. What you have just said confirms what the minister and I had predicted, namely that Garfella would quickly retain Mr. von Teichman again as the mastermind in this.

**Hon. Mr. Drea:** For the record, Mr. von Teichman responded just as Mr. Davison did. He gave me all 32 teeth, just laughed at us all the way.

**Mr. Simpson:** The only thing I was coming to is that part of the package sent to Alderman Robertson was a letter from Tikal and Associates, which is von Teichman's firm,

which said on behalf of the nonresident owners that when it came to conversion they were on the hook, or would be on the hook for all the costs in connection with the conversion—the structural costs, the legal costs, and so on—so there would be no costs for the existing resident owners. That was sent to Alderman Robertson and that was where it stood at the end of the year.

We have had discussions subsequently with Michael Weir, a solicitor out in that area, who has been active in respect to two buildings, 3320 Fieldgate Drive and 10 Garfella Drive, on behalf of the resident owners and so on.

**Mr. Philip:** Where is Fieldgate, is that in the borough?

12:50 p.m.

**Mr. Simpson:** That is in Mississauga and is another one we are working on. That was as a result of a meeting that was held in our offices with myself, one of our legal staff and Councillor Skjarum of Mississauga, who came on behalf of Mayor McCallion and some of the owners there.

Weir tells us the reason he had been giving some initial attention to 3320 Fieldgate, and we were aware of this, is that they have a fairly serious mortgage renewal situation which was pressing upon them. He had been working on that and it is well along the road to seeking conversion approval. I have not had any further word—that was from Weir as about a week ago.

**Mr. Philip:** Is Weir acting on behalf of the mortgage company or on behalf of the principal owners in the building?

**Mr. Simpson:** I can get this clarified for the next session of the committee hearings. I just have a note, I do not have it exactly. Since he was at the meeting, he seems to be playing a pivotal role on behalf of somebody. Naturally the question comes as between Tikal and Associates and von Teichman and Weir, and so on. I do not know exactly but I will find out. As it stands now, the proposition on the table is for the borough to do all the exploring necessary in respect of these two propositions and let us know so that the minister can take something forward, either by way of an exemption or so that somebody can deal with the conversion question.

**Mr. Philip:** My understanding is that von Teichman appeared at the borough, talked to the planner and never reappeared. I suspect from talking to Alderman Robertson and some other people at the borough that 10 Garfella may not be terribly expensive to convert or to bring up to condominium

standards, but that the Arcot project may well be very expensive. I believe that is the story. I do not think I have those projects reversed.

In any case we are still left with the problem of a deteriorating building. As I said to the minister the other day, those mortgage companies will no doubt finally find out at the time those mortgages start to be renewed, in two years. If I were in the position of the mortgage company I certainly would not renew a mortgage on that kind of project. I do not know exactly what is going to happen at that time but the mortgage company, I imagine, will carry on until such time as the mortgages are renewable and then they will be holding the bag.

Where do we go from here?

**Hon. Mr. Drea:** What we want to do in terms of policy is that Mr. Simpson and our legal advisers are now as convinced as anybody can be in this world that the Condominium Act ends the ability of somebody to do this end-around conversion. Where some of the remnants of 1975, 1976, 1977, 1978 and 1979 prior to the Condominium Act's passage are still out there, we want to approach the municipalities, giving them assurance there will be no more, and that it is in the best interests of the municipalities that the remaining ones be put into a proper status, in other words allowed to be converted.

The difficulty and the reason for the municipality having to be involved was at the express direction of D. R. Irvine, the Minister of Housing in 1975, because at that time rental stock was threatened across the province and many municipal councils would not face the responsibility when there was an application for a conversion. They were sending it forward to the Ministry of Housing with no comment.

Mr. Irvine invoked a rule—I do not think it was a regulation, my deputy who was there then might know—that before any conversion would be looked at by the province, the municipality had to pass a motion in the affirmative. That ended most of them because the municipalities then could not exactly say it was the province's fault one way or the other. They wanted their rental stock preserved.

The reason this whole business began had nothing to do with condominiums. It was a device, purely and simply, to get around the Landlord and Tenant Act to be able to evict or get possession from tenants in multiple units. The thing was invoked. There was a problem no matter what the warning.



With the first one in Kingston Road, I can tell you I went door to door. Every tenant in that building, every one of them, got a letter which I handed to him or her. I think I went back two or three times. I didn't get all of them, but I certainly put one under every door, most of them got one, saying they didn't have to leave and that the real estate company at that time was guilty of misrepresentation.

There were steps taken. A letter was delivered personally to every tenant—because the tenants were being told, “Buy or you will have to leave”—and secondly to every nonresident owner. The letter dictated by Mr. Weinstein from my ministry, was approved line by line and they had to satisfy us it had been delivered. People still bought.

**Mr. Philip:** But even with the court case that—

**Hon. Mr. Drea:** Then, of course, there was the court case. They thought that common law would ask, “Would we be interfering in joint tenancies?” We won the court case that they couldn't be evicted.

**Mr. Philip:** Even after the court case the Arcot project went ahead, because the date on which the Arcot project was started was not only after the Attorney General had expressed his legal opinion to me in the House that evicting tenants was contrary to the Landlord and Tenant Act, but also after a court case had upheld the opinion that he, I and you shared on that.

**Hon. Mr. Drea:** I originally brought it forward. All I am saying to you is that the reason it continued is that the impression was being given that these were mere investors in an overall unit and that occupancy was something they might or might not want. The impression was laid out that these were a hundred people who were each buying one one 100th of a unit. There is no way one can stop that. One of the problems we faced was that joint tenancy now begins with marriage. If one was saying that two people couldn't buy a common interest, one was in trouble there.

What concerns me all the way through is that one knows what the end result is going to be. It comes full circle and, as you say, the mortgages come due. At that point, the people who are there are resident or non-resident. Some of the nonresidents are not speculators. They have some dwelling of their own, or some of them are tenants in some other place and they are willing to wait until the person vacates unit A or B or whatever they want. They will get the rent somehow. It has never been conveyed

directly but somehow they get their expenses on it and they hold on.

One then comes full circle on the thing and if one wants to invoke the letter of the law, one just lets the place go, but one also knows that one is dispossessing people who are basically of pretty modest means. This is where the von Teichman people know what the end result is going to be with government. That's why we have moved to stop it in the Condominium Act.

The remnants are out there. We want to go to the municipalities and if there is a difficulty—in some there may be difficulties—in bringing the structure up to the bylaw standard for conversion or for exemption on a one-shot basis, we want to try to use our good offices so that perhaps a time frame can be established to bring it up to standard.

In certain cases it was easy. The one in Scarborough involved a relatively minor amount of money. Others when they were done three, four or five years ago, were not in a shape where mere maintenance over these years has really made the improvement necessary to face a bylaw. Unless and until we clean them up there is a threat to the municipality. This is putting aside the question of individual persons and I feel very strongly for them. The municipality can say, “Look, they knew what they were doing.” I don't necessarily subscribe to that.

1 p.m.

**Mr. Philip:** That is what Mr. Wells said.

**Hon. Mr. Drea:** The municipality is faced with a constantly deteriorating multiple-tenant dwelling. They have two choices: to let it go to wrack and ruin, which poses great problems, socially, economically, et cetera for the municipality; or to feel confident to deal with it on a one-shot basis. Until now, I think the municipalities somehow have been concerned that if they do one, there will be 51 next year.

**Mr. Philip:** May I just mirror back to the minister what I have heard him say, just to make sure that what I understand he is saying is correct? Until now, you have had problems with the von Teichmans and whoever they are acting on behalf of—

**Hon. Mr. Drea:** Themselves, in the first instance.

**Mr. Philip:** All right, themselves, in the first instance, but they also have other financial backers. The problem has been, on the part of the municipality, that it obviously wants some guarantees that the buildings are being brought up to standard before it would consider conversions or a lessening in any way of its standards.

In the case of Etobicoke we have a double problem because, as I understand it, they passed a bylaw that says one must have a two per cent vacancy rate or more before it will allow a conversion.

You are saying that you can now assure the municipalities that the Condominium Act is tight enough to guarantee there will be no more of these occurring and, therefore, you will use your personal influence to try to act as a negotiator between von Teichman and the municipality so it can bring in some time frame in bringing in the—

**Hon. Mr. Drea:** I don't think I want to go so far as to be a negotiator between von Teichman and anyone. We are saying we want to do our best through our good offices to assure the municipalities this cannot happen. What they are facing is a one-shot exemption so they can look at it as an exemption to meet a need, rather than as a precedent. I suppose that confers some value on the status of von Teichman and his associates, but that is there anyway.

If the municipality says, "No," I tell you we will have used our good offices. If they come down and flatly say, "No," even after all the circumstances are in, there is not much we can do about it because it is the standard. I am confident that, on the basis of its knowing it cannot happen, that it is dealing with one-shot exemptions and it is in its best interests to do it now, not 10 years from now when the property is totally deteriorated; one can get a logical, orderly cleanup. If the property is in very poor condition, I think one of the things we might try to persuade the municipality to do is to make the exemption on the basis of the standards being raised in a time frame rather than instantly. If there is to be a conversion the municipality wants the highest standards possible. I understand that.

In some of these cases, the people had very little money going in. They still have little money, but if the place was orderly and they made a little additional sacrifice over a period of years, it could be brought up to standard and this would be beneficial to the neighbourhood and the municipality.

**Mr. Philip:** So in the next month or so, you will be contacting the municipality on this.

**Hon. Mr. Drea:** Yes.

**Mr. Philip:** All right. This is the proposal you will be making to them.

**Hon. Mr. Drea:** Yes, we will just acquaint them with all the facts we have. In the final analysis it is their decision.

**Mr. Philip:** I have two supplementary questions and then the chairman, no doubt, would like to take a vote.

One is that you are still going to have a problem of minority interest holders in that building. Until such time as they are covered by the Condominium Act, they won't even have access to the books. I have seen some of the things that Garfella have given to Geoff Pacey, the lawyer on behalf of the minority interest holders. My goodness, if Mrs. O'Grady kept her candy store in that kind of shape she would have somebody from the government, if only the tax people, down on her to say: "How can you keep records like that? What kind of records are these?"

The other question is, if the tenants decide that the building standards of the borough are being violated and they ask the municipality to bring charges against the corporation, what is the corporation? Are the minority interest holders part of that corporation? Can they be socked with those extra fines when the cause of it is Garfella Investments, its way of keeping books, its way of running up charges? Who does the municipality sue?

**Hon. Mr. Drea:** This is the problem. They are partners. That's why I want them cleaned up as rapidly as possible, because until they get condominium status they face all those perils that you outlined, plus many, many others, including what you say about the lending institutions taking a look when some of these mortgages come due.

Bear in mind that with current interest rates and so forth, they will have to be renewed at a much higher rate than they are paying now. They could say, "No way"; that they would prefer to foreclose, take a minor loss, do a new mortgage on somebody buying it because tenancy might now have some attractiveness.

That's my concern. We use the full remedy of the law and if the people wind up dispossessed, I suppose one can say they were warned. I don't think that does much good to somebody who finds himself out on the street with nothing, no equity. Indeed, there might very well be some litigation or something about expenses that were not paid. He could wind up after four years there with a judgement against him that would almost preclude him from ever owning or seeming to own a property.

**Mr. Philip:** May I suggest that within a month's time either you or Mr. Simpson get together with the minority interest holders and with Mr. Pacey, their lawyer, to fill them

in on what has been done? I would be quite willing to organize the distribution of the notice of a meeting. May I suggest you advise them then of what action you have taken vis-à-vis the municipality, and so forth. We can report back to them at that time.

**Hon. Mr. Drea:** Yes. Do it through Mr. Simpson.

**Mr. Philip:** Maybe Mr. Simpson can contact me as soon as he feels some progress is being made so that we have something specific to report.

**Hon. Mr. Drea:** I think time is of some urgency in the matter because if this delays much longer we are going to have the lending institutions and a lot of complications come into the thing. At that point it's going to be pretty difficult to unravel.

**Mr. Philip:** I think you and I agree that we have a common interest and our problem is coming up with a solution to how to zap

them. I hope one of us or both of us, hopefully you, are successful.

**Hon. Mr. Drea:** I don't intend to make a lifetime career of flirting with that particular gentleman. I have had five years of it now, five years, and every time I invoke the law he sits there and smiles at me because he has a whole lot of little, ordinary people sitting there. If I invoke the law—and you have been there with me—he doesn't suffer a bit. Indeed, he may make pretty close to the same profit he would have if the law were not invoked.

**Mr. Philip:** With the little bit of money they invest in these buildings, less than 15 per cent, they should not be doing badly.

**The Acting Chairman:** Shall vote 1501 carry?

Vote 1501 agreed to.

The committee adjourned at 1:07 p.m.



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From the Ministry of Consumer and Commercial Relations:  
Simpson, R. A., Executive Director, Business Practices Division





# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Thursday, June 12, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC



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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, JUNE 12, 1980

The committee met at 3:38 p.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (continued)

**Mr. Chairman:** I recognize a quorum. We have a matter I would like to deal with first; that is, the subcommittee report on our scheduling for the summer.

**Mr. Swart** has the report before him. Since he was part of that committee, maybe, rather than my reading the whole report, he can simply move the appropriate portions. Then I can ask the clerk to advise the government House leader of the intentions of the committee.

**Mr. Swart** moves that the following proposals be adopted for consideration of the annual report of the Ministry of Housing for the fiscal year ending March 31, 1979: that the committee sit during the weeks of September 1, 8, 15 and 22, 1980, to consider the said report, and that the committee sit on Monday, Tuesday, Wednesday and Thursday of these weeks; that the committee instruct the chairman of the committee to approach the government House leader to request that a motion be placed before the House to permit the committee to adjourn from place to place in Ontario during consideration of the said report; and that the committee instruct the clerk of the committee to place advertisements in the daily and weekly newspapers in the province advising organizations, groups and individuals of the committee's hearings and inviting submissions.

Does anyone wish to address himself to that motion?

**Mr. Sterling:** Mr. Chairman, perhaps you can clear up something for me. This motion is permissive, is it not? In other words, if the committee found it did not have to sit for the fourth week, it would not be necessary, would it?

**Mr. Chairman:** No, we would only sit as long as we had presentations.

**Mr. Sterling:** If we wanted to avoid sitting on a Monday or a Thursday, could we avoid that as well?

**Mr. Chairman:** Sure. It gives us flexibility so that the committee can schedule itself. This simply gives us an umbrella motion to sit.

**Mr. M. N. Davison:** I am a little confused about the reason for the two pieces of paper given to us.

**Mr. Chairman:** The second one is a second motion.

**Mr. M. N. Davison:** Is it also from the subcommittee?

**Mr. Chairman:** No. The second one is my personal proposal to the committee in the light of discussions I have had with some people and with our clerk. If we deal with **Mr. Swart's** motion, then I can have somebody move my motion.

Motion agreed to.

**Mr. Chairman:** Now the second motion: **Mr. Swart** moves that the committee instruct the chairman of the committee to approach the government House leader to request that a motion be placed before the House authorizing the Speaker to issue his warrant for the attendance of such persons and the production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations.

I have discussed this with **Mrs. Campbell** and with one or two other members of the committee with whom I had an opportunity to speak informally. We do not expect to have to use this, but, as we found in this committee in the past, it is very useful to have this available to us if we do run into a problem in our investigations. That is the only reason I am suggesting to the committee that we approve this motion.

**Mr. M. N. Davison:** I was under the impression that this, in essence, is part of the normal power of a standing committee. Am I wrong?

**Mr. Chairman:** This is simply to compel someone to attend if he refuses an invitation,

or to compel someone to produce a document which the committee wishes to see.

**Mr. M. N. Davison:** Let me try my question the other way around: Is the reason for this motion so that there will be some increased power residing in the committee during the period in which the House is not sitting this summer?

**Mr. Chairman:** Precisely. We do not want to find ourselves in the position where we could not obtain a document until such time as the House reconvenes and we can present a motion to the House asking the Speaker to issue his warrant.

**Mr. M. N. Davison:** It is something the committee normally does before its summer or winter session.

**Mr. Chairman:** Precisely.

Motion agreed to.

**Mr. Chairman:** Thank you, members of the committee. Because I have another engagement, I am going to ask Mr. Swart to take the chair for the rest of the afternoon.

**The Acting Chairman (Mr. Swart):** My understanding is we are still on vote 1502 and Mr. Davison has some further comments to make. Is that correct?

**Mr. M. N. Davison:** Reasonably close, Mr. Chairman. We concluded the vote on 1501, and 1502 has not yet commenced.

On vote 1502, commercial standards program:

**Mr. M. N. Davison:** The Liberal critic, Mr. Breithaupt, is unable to be here today. In the tentative agenda we do have two days set aside for commercial standards and it is the normal sequence of events to go through vote 1502 item by item. That has been done on other occasions.

Because Mr. Breithaupt cannot be here today and because he is the critic for the official opposition, I am going to suggest—not that it requires any sort of approval or anything—that we deal with vote 1502 in a fairly flexible, if not apparently haphazard manner. That would mean that anything in vote 1502 is subject for discussion in any order today and tomorrow.

**Hon. Mr. Drea:** Just one thing: Mr. Renwick wanted to discuss a particular topic and he cannot be here today.

**Mr. M. N. Davison:** Was it under 1502?

**Hon. Mr. Drea:** Yes.

**Mr. M. N. Davison:** What serves for Mr. Breithaupt can serve for Mr. Renwick.

**Hon. Mr. Drea:** Mr. Renwick wanted to reserve some time tomorrow.

**Mr. M. N. Davison:** Mr. McClellan has a matter under vote 1502, and since he has other business in the House, I will defer to him at this point.

**The Acting Chairman:** Okay, I just want to be sure there is consensus. Is there agreement on this? Is there anybody who objects to dealing with it in this manner?

No one objects.

**Hon. Mr. Drea:** Please leave a note, Mr. Chairman, so the chairman tomorrow, whoever he may be, keeps Mr. Renwick's place.

**Mr. McClellan:** Perhaps Mr. Simpson could join the minister.

**Hon. Mr. Drea:** For the record, this is Mr. Robert Simpson, executive director of the business practices division, Ministry of Consumer and Commercial Relations.

**Mr. McClellan:** Mr. Chairman, over the course of a number of estimates in past years, I have raised the issue of the plight of what has become known as the Rembrandt homeowners' association, those persons who had the misfortune to purchase homes from Pastoria Holdings Limited and its associated companies.

**Hon. Mr. Drea:** I am glad you got both names in, because it has been so long nobody remembers the first one.

**Mr. McClellan:** I remember.

**Hon. Mr. Drea:** So do I, but every time you talked about it the names had been changed, and nobody knew what you were talking about except you and me.

**Mr. McClellan:** That is right. I gather there is a long list of names too.

Last year there was a substantial breakthrough with the initiative of the minister in coming forward with what I guess I could call a compensatory repair program for the people who had purchased homes from Pastoria and its associated companies.

I just wanted to spend a few minutes this year in the estimates getting an update of work in progress. I understand there has been real progress in having inspections done on the properties of the home owners. I am not quite sure how far we are along with the inspection programs.

Perhaps Mr. Simpson could bring us up to date on that, and then tell us what the plans are for the second stage, once all of the inspections of the properties have been completed and there is a list of repairs that need to be done.

**Mr. Simpson:** Subsequent to the meeting we held in our offices in December, when



the minister and the association laid out a program—

**Hon. Mr. Drea:** Mr. McClellan was at that meeting.

**Mr. McClellan:** Yes, I was at that meeting.

**Mr. Simpson:** —the association did an excellent job. It prepared a form and circulated it out to all the home owners, asking them to fill it in and list the kinds of faults they thought existed in their homes. I think around mid to late February, we received the first batch of them. As I recall, there were about 110 to 120 in that first batch.

3:50 p.m.

The new home warranty association, HUDAC, then undertook to inspect all of these. That inspection program has been ongoing since that time. About three weeks ago another 32 submissions were received from home owners. I think the total on hand is now around 160 all together.

At the same time, the warranty association has been pursuing, with the particular developer, these propositions, the nature of these problems and the possible remedies. As of last week they had made substantial progress in terms of securing a commitment to action.

We, too, would have liked to have seen the inspection program finished up before now, and we are in the final stages now. Last week the warranty association made an arrangement with one of the home owners to disassemble part of one of the flat roofs and look in there to try to see what the nature of the construction had been. This is one of the roofs which had not had any problems as yet in actually falling down or from excessive water.

(As a result of that the warranty association had a meeting with us last week. Quite frankly, water is the common denominator, in terms of major things, throughout the whole piece—water in the roofs, in the ceilings and in the basements. Last week we suggested to the warranty association as part of completing their assessment—and they are figuring out what to do—that they engage some extra expertise in the field of roofing, because they are having a dickens of a time figuring out exactly what causes these flat roofs to leak.

When they took the roof apart last week, they found, I am told—I did not see the roof and I have not seen the technical report—that it was constructed in accordance with the way it was supposed to be constructed some years ago, with the stated levels of

material, overlapping, sealants and so on. We sent them back and said, "Go find the best consultant or roofing expert in the city and have another look." So they are now in the final stages of sizing up all the technical things. I am hoping we will have some news for these home owners very shortly.

**Mr. McClellan:** When the roof was pulled apart and looked at, were any comments made with respect to the design? The reason I ask is I gather from one person who had some repairs done that a contractor had looked at the roof and said, "It was constructed according to the design all right, but the problem is the design was no good." That is one of the questions that you will be wanting a qualified roofing specialist to look at.

**Mr. Simpson:** Yes. They came in and they said: "We took it apart and we looked. It is built this way and that way and apparently it has all the things the standards called for at the time." And I said, "But you have still got—

**Hon. Mr. Drea:** Not to our standards.

**Mr. Simpson:** No.

**Mr. McClellan:** I understand that.

**Mr. Simpson:** My point was: "There is still water somewhere and there is some reason for it. So you had better get some more experts and get a further analysis of the problems." That is what they are in the process of doing.

**Hon. Mr. Drea:** As a matter of fact, in the beginning the water problem, except in the basement, I recall, was not a major one. There were some other things. But as time went on that water problem became more and more substantial.

**Mr. McClellan:** At this point you are not able to give some firm timetable targets for the repair work to actually begin.

**Mr. Simpson:** As you probably know, we endeavoured to get something going. We anticipated something would be going by way of rectification, and that those things would be dealt with around June 1. We do not feel that HUDAC, having made about a 12-week target, are far off the mark—just a couple of weeks. I think it is fair to say the builder is ready to sit down and hear the news. He is waiting for the word on this from the association. The association is still, as I said, in the final stages of assessing all the findings and trying to make some determination.

I have not heard from them this week, but I believe the final analysis of the water situation will be concluded this week.

**Hon. Mr. Drea:** If I could interrupt: Without setting a firm date, we really want the work to commence forthwith, because I do not want it to go on over the winter.

We had a similar situation in Waterloo last year. It was covered, although it was blocked by a technicality in a bankruptcy proceeding. We told them we wanted it done before the cold weather season commenced, because if it is done then it just drags for a number of reasons.

**Mr. McClellan:** There have been a number of concerns expressed to me, as you may be able to guess, over the course of the last eight months. I have been satisfied that the ministry is doing what it said it was going to do, and confident that the commitments have been, are being and will be honoured.

I think the individual home owner should be notified as quickly as possible with respect to the inspection report findings and the determination of what is going to be done. Can you tell me how soon that might be possible to do?

**Hon. Mr. Drea:** Just as soon as they are completed. I think, in many of the cases, we could probably give it to individuals now. But the group, since they chose to act as an association, wanted it all at the same time.

Although I may stand to be corrected by my director, I think in the majority of them the submission of the inspection report is a formality. I think everybody agrees, in the majority of them, what the remedial work is. It is not going to be a question of each of them being re-examined. There is this water question which has to be completed. Once that is done, I do not think there is any—

**Mr. Simpson:** Everyone will receive a full communication. "Here it is, Mr. and Mrs. Smith. This is the situation on your house and this is what is proposed." There will be one communication to each of the owners individually. This was the deal a long time ago.

There are some owners who have not dealt through that particular association. We have indicated to them that that was the program for everyone and that we can do it on that basis.

**Mr. McClellan:** Can we have a statement with respect to, if you will, an appeal process? Let us assume that an individual gets the inspection report, the work is done, but he feels that either the inspection did not cover everything that was wrong or the repair

was not done up to what he feels is a proper standard. Where will he go for redress?

**Hon. Mr. Drea:** Although they do not have any formal rights, if there is a dispute over the workmanship at the end, we would follow exactly the same procedure as if they had just bought that home today. They had filed a complaint about workmanship or whatever, the workmanship supposedly was remedied and they were not satisfied with it. It would work exactly the same way.

**Mr. McClellan:** So the standards with respect to the quality of the workmanship and the repairs will be the standards under the Housing and Urban Development Association of Canada warranty program.

**Hon. Mr. Drea:** Yes. I am glad you brought that up. I do not know whether you were still at that meeting in December, but towards the end of it one of the people brought up that very point, although it was very hypothetical at that stage because they were really just commencing.

4 p.m.

Their concern was that any attempt at remedy would be considered final and binding. We pointed out that if they were not satisfied with the workmanship they would file a complaint with HUDAC, then HUDAC would go out and ascertain whether the complaint was valid. If the complaint was valid, then the workmanship would be upgraded or made satisfactory.

The reason I said they had no formal rights is that obviously if they wanted to attempt individually to enforce it, they couldn't, but the ministry will enforce it for them, because that was the commitment.

The bottom line is that the remedial work will be completed satisfactorily according to the original inspection report of the deficiency.

**Mr. McClellan:** Just one other question: I probably should not identify properties by addresses. There were a couple of properties, which I think have been brought to the attention of Mr. Simpson within the last month or month and a half. These are properties where, I gather, every time it rains it floods. There was a concern about emergency repairs, simply because the places are like sieves and every time it rains more damage is done.

I gather one owner found himself in the position that he simply had to have emergency repairs done and to pay for them in order to ward off very serious and substantial water damage. Is the ministry able to deal in

an emergency way with the emergency situations?

**Mr. Simpson:** Yes, there were a couple of such situations reported to us. I know a member of my staff handled those discussions with a member of that association. He indicated that they did not have an emergency repair provision and that the home owners had to make their own determinations at this stage.

Water in basements is certainly one of the things that has been indicated as a problem. I saw some of the inspection reports and it shows up. It will be part of the rectification program if they can pin down the cause and the size of the problem and so on. I saw one where there seemed to be quite a substantial crack. It is probably the one that was referred to.

I cannot speak for the parties directly negotiating, but I do not think there will be a huge argument over a serious problem in terms of the repairs and the amount, and so on. It is common sense that the owner will be treated fairly under the circumstances.

**Hon. Mr. Drea:** I think Mr. McClellan may be touching upon the point that since the person made an emergency repair, no permanent repair will be made because the structure has been altered, or something like that. The answer is no—

**Mr. Simpson:** No, we'll deal with that.

**Hon. Mr. Drea:** It is on the inspection report. Whatever was done in the interim was just done to keep water out of the cellar. It does not solve the permanent problem, and the remedial obligation is to solve the water problem.

**Mr. McClellan:** Okay. I'll leave it that. Thank you, Mr. Chairman.

**The Acting Chairman:** The only person I have on my list at this time is Michael Davison.

**Mr. M. N. Davison:** The first item I want to raise with the minister and his staff under vote 1502 deals with consumer automobile protection. We know that this has been an issue dear to the minister's heart. It has certainly been one of those areas where, from time to time, the minister—and I congratulate him for it—has moved with some vigour and speed to protect consumers.

There are three general areas of consumer automobile protection that I want to raise. The first involves a question of disclosure—how much information has to be disclosed under the Motor Vehicle Dealers Act.

As you know, the Automobile Protection Association has been involved in this whole

area, not just in Ontario but also in other jurisdictions. There are a couple of interesting cases which it has been able to bring forward and solve on its own.

The minister will recall the question of accelerated rusting on the Volares and Aspens, which resulted from a design flaw in the car. Under pressure from consumers in the United States, Chrysler finally moved to extend the warranty to cover that, although it was one of those cases—and there are many of them—where it did not give the same extension in Canada at that time. This is a thing that happens all too frequently in problems with automobiles. Finally the APA had some success in negotiating which resulted in the same settlement being extended in Canada.

The other case, during the same period, was the piston scuffing in the engines of later model Fords. Again, in the United States Ford signed a consent decree and extended an offer of free repairs to deal with that problem. It was the same situation: They did not extend it to Canada immediately. Again there was a lengthy period of negotiations which have recently resulted in an extension and the same deal for Canadian Ford owners.

Those are two cases that turned out well for Canadian car owners after some time. Unfortunately, I do not think that is the pattern; more specifically, there are a number of cases like that still outstanding. I want to bring a few of them to the minister's attention.

**Hon. Mr. Drea:** Do you want to do that now or do you want to hold it for a moment while I make some comments?

**Mr. M. N. Davison:** Did you want to make a general comment?

**Hon. Mr. Drea:** Yes. Part of the difficulty is that almost every one of these cases involves a new car. I have yet to hear of one concerning a used car.

**Mr. M. N. Davison:** You are ahead of me, because I am going to come to that in just a minute.

**Hon. Mr. Drea:** With a used car we have a little bit more jurisdiction. The problem is that some time ago the provinces ceded to the federal government the right to impose standards, for rather obvious reasons. There was an auto pact, and virtually the same model in some varieties of car could be produced in Texas or in Oakville. This seemed a logical approach. Also, there was the fact that the federal government, under importation—without getting into all kinds of constitutional delays and everything else—could



deal directly with the American government, because of the unique relationship of the auto pact and the standards.

The problem has been that the United States government has been more aggressive, partly, I think, because of their procedure. They release their findings in the form of a proposal, the company has a chance to respond, and then they make a final ruling. They have a set structure and a set formula by which to do it. The American government has been much more aggressive.

I stand to be corrected by Mr. Simpson, the director of the business practices division, because he is intimate with all of this on a day to day basis, but I can never recall the Canadian government finding a fault and instituting a recall in Canada, and it's then being followed in the United States. It is always the other way around. There is a finding by one or another branch of the United States government—

Mr. M. N. Davison: Or by private consumers.

Hon. Mr. Drea: Yes, but I am talking about the point at which the government is involved. With individuals, of course, there is no structure. They go to court or they do something else. But you want to get at this right at the start, when government is setting the standards. If that standard is not what it is supposed to be then the standard should be changed and that vehicle not allowed for sale until it meets the new standard. That is preventive. No matter what you do to remedy the situation for the consumer, whether it is a fender that has rusted after two years, or a faulty engine or, as we have today, a question of safety of the park brake on the Ford automobile, it is too late.

4:10 p.m.

Again, it is the United States government, through a variety of means, and sometimes state governments that bring action on it. They move, and then sometimes it happens at the same time in Canada, but sometimes much later. This, I think, is a very, very real problem. If model A, that conforms to all the standards set down by the United States and Canada, is found faulty in the United States because of its design or because of the material used in it, then it is equally faulty in Canada.

Mr. M. N. Davison: One would think so.

Hon. Mr. Drea: If the fender rusts, or if it is liable to, I tell you, in the United States they do not prove it case by case, comparing a dry climate like Arizona, where there is literally no rust because of the

climate, with Buffalo, New York, which is loaded with salt. They take one approach: by design, by standards, by specifications. Why the delay here?

I forget the particular case, but there was one here not too long ago, in the last couple of years, where the government of Canada said, in effect—no, that was tires, I am sorry. But it is the same thing. In the Firestone episode, notwithstanding what was found in the United States and what was being done in the United States, the Canadian government said, "We think they made a bum decision and we are not going to do anything." I am paraphrasing. They said it in a much more statesmanlike way.

Mr. M. N. Davison: The Ford transmission case is a similar one in some respects.

Hon. Mr. Drea: I remember the tire case because they just came flat out and said: "We don't care what the evidence is in the United States. We don't think it is a problem in Canada." They said this even though the tires were made to the same specs.

A month later, two months later, whatever the time was, I had to use my office to locate people because they had learned at the time that there was going to be no recall in Canada. Eventually there was a partial recall, but we spent a very long time locating Firestone tire owners.

Why the standard here is not applicable is something for which I have never been able to get a valid explanation. It is a design and specifications standard based on the available evidence in what is a common market—a common production market, a common standards market, a common retail market, a common use market. This is a very real problem.

On the one hand, if the province, under the British North America Act as it exists now, starts plunging into determining that standard, what do we really do for the customer? The first thing we are into is a constitutional argument, that it really should be federal, et cetera.

Secondly, I feel for the consumer. Some of these cases have not been as harmless as a rusting fender. That is a costly item, but it will not kill you. Some cases have involved wheel bolts, steering mechanisms, brakes, and now there is one involving the parking brake.

Mr. M. N. Davison: No, it is the transmission.

Hon. Mr. Drea: No, the Ford one involves the parking brake. An allegation was made by the American government today or yesterday about the parking brake on certain models

of the Ford automobile made in certain years, that when you put it into P for "park"—

**Mr. M. N. Davison:** We are talking about the same problem, we just have a different explanation.

**Hon. Mr. Drea:** Okay. Some people think that a transmission problem means it may not start. With this one, you put it in P—

**Mr. M. N. Davison:** Slam the door, and the transmission slips into reverse.

**Hon. Mr. Drea:** The lever comes out. In any event, you put it into P, but you have no guarantee that it is in P. According to complaints received by the American government, this has killed a number of people, has injured many more, and has caused a number of accidents that have not resulted in personal injury or fatality. That is a direct safety item. If you had that model of an automobile, you would have to start taking the utmost of precautions, and if your driveway had an incline you would not park it in your driveway.

**Mr. M. N. Davison:** Block the wheels.

**Hon. Mr. Drea:** You cannot always do that in the winter-time. You would want to put it on a street where you could put the wheels in such a position that they would be against the curb, but that is a direct safety matter. Everybody here just sits and waits and hears the news every day and so forth, and it is very frustrating. I suppose in the long run we will get into constitutional reform, but I want to move a lot faster than that.

If you have a problem with gasoline tanks, which terrifies people at the moment, and with good reason—

**Mr. M. N. Davison:** In spite of some court decisions.

**Hon. Mr. Drea:** It is not so much the court decisions because they are on damages, but there are standards on these types of things. There are a number of other matters in there: Some are economic and that is substantial enough, but, by the same token, many involve one's personal safety. I would not like to have an automobile about which I had read the United States government was insisting it be recalled and corrected because its steering mechanism is such that over 55 miles an hour and under certain conditions it is going to fail. This is a very, very real problem.

Part of the problem, again, discussing things rationally, is that in these jurisdictional disputes with the federal governments on this matter we have had, unfortunately, to deal with three governments within a short period of time.

Certainly this problem has to be addressed. If a vehicle is found wanting because of extensive studies or other things in the United States, the government of Canada must accept one of two things: It must be prepared to go ahead instantly, or it must be prepared to cede back to the provinces, if not jurisdiction over standards then at least the ability on a very clear-cut basis to enforce the standards.

It may be that the determination of standards should be done on a very broad plane, and that is probably fair, but if the federal government cannot enforce the standards, having set them, it should be prepared to say to the provinces, "You can enforce those standards," rather than leaving it a grey area.

**Mr. M. N. Davison:** You agree that is something of a grey area right there, not totally a federal responsibility.

**Hon. Mr. Drea:** On the court cases, if the federal government would enter into an agreement with us—because the enforcement now is being constantly pushed back to the provincial level—if it would enter into that agreement then we would voluntarily accept the enforcement. I do not think the courts—if they did, fine, then we will cede over to them the enforcement, but we cannot have this gap in the thing because it is ludicrous.

**Mr. M. N. Davison:** The major reason I mentioned those cases was not only because of the concern resulting from these kinds of cases—and I am glad to hear the minister's response—but also because those two cases I brought forward are success stories. Finally something did happen.

I want to move into three areas, though, that are directly within the jurisdiction of the province. As I said earlier, one of them deals with corporate disclosure under the Motor Vehicle Dealers Act. There are four cases I want to raise with the minister, with most of which he is probably familiar. They all came to me by way of the Automobile Protection Association.

The first one, which is now in reasonably good shape, involves somebody who purchased a purportedly new 1979 Aspen which she found out afterwards had in fact been previously owned. The dealer in question even had the audacity in that case to charge a fee for freight and pre-delivery. It was really incredible.

4:20 p.m.

After months of hassle it seems something is going to be done now because that deal is being taken to court, so I do not want to

go into that particular case, although I am sure the minister is familiar with it.

The other three have not been resolved in such a fashion. The second one involved a person who purchased a 1979 LeSabre as a new car and subsequently discovered the car had been previously bought and returned. The original owner refused to accept the car because the engine was "a mess." The dealer in question, upon the authorization of the company, rebored four of the cylinders and put the car on the lot as a new car. The second owner thought he was buying a new car that had no repairs done to it. He is now feeding the car three quarts of oil every 3,000 kilometres.

In the third case, the consumer purchased a Rabbit from a lot as a demonstrator. His understanding was that, as a demonstrator, the car still had its warranty, otherwise he would not have purchased it. I can confirm that because the car I am driving I purchased as a demonstrator and the warranty was kept.

Hon. Mr. Drea: I hope it's not a Rabbit.

Mr. M. N. Davison: No, it's not a Rabbit. Let's not ask any more questions about what it is.

Hon. Mr. Drea: No, I won't. Mr. Ruston and Mr. Mancini may ask. I carry their platform with me.

Mr. M. N. Davison: As that one turned out, he was later informed—and this is really quite incredible—that the car had been involved in a major accident which necessitated something in the order of about 50 per cent of the car being rebuilt. As a result, you guessed it—the warranty was void.

In this case, on June 5, 1980, the Automobile Protection Association was able to negotiate compensation from the dealer to the tune of \$400. To what extent that was a reasonable end to the case—

Hon. Mr. Drea: Is it a used car?

Mr. M. N. Davison: No, this is allegedly a demonstrator. So, in other words, he has \$400 but he does not have a warranty.

In the fourth case, a consumer purchased a 1979 LTD as a demonstrator which then turned out to be a leased car. The Motor Vehicle Dealers Act requires that it clearly be stated whether a car is new, used or a demonstrator. In the above case the dealer had legally covered himself by listing the car as used on the warranty card. In the sales contract he had put that down. But in all the verbal representations he made—and now we come back to the problem about the difference between verbal and written contracts to

some extent—he said it was a demo. Well, it wasn't.

I think what those cases point to is that we have a problem in the legislation. More specifically, we have a problem in regulation in the province. The act, under section 35 which is the regulation section, provides that the Lieutenant Governor in Council can make regulations in the following areas:

"(j) prescribing the information that motor vehicle dealers and salesmen shall disclose respecting the history of any class or classes of motor vehicles;

"(k) prohibiting prescribed alterations of motor vehicles or any part thereof and requiring disclosure of prescribed alterations not prohibited; and,

"(l) governing contracts for the sale and purchase of motor vehicles."

It seems to me that the power to deal with the problems I put before the minister by regulation is there. However, under the actual disclosure and alteration regulations of the act, there is no disclosure requirement other than stating whether or not the car has been used as a police vehicle or a taxicab; whether or not a car is a demonstrator is defined by the act itself.

Interjection.

The Acting Chairman: Continue.

Mr. M. N. Davison: I'm sorry, I've lost track.

Hon. Mr. Drea: You were talking about police cars and cabs, and nothing about demonstrators.

Mr. M. N. Davison: Demonstrator is defined in the act itself, not by regulation.

I think it is possible without rewriting all the legislation to provide a bill which maybe we should be doing anyway; it is possible under the power the minister now has to make very clear what can and cannot happen, so that cases like the ones I have set out are clearly covered under the legislation. I would ask the minister and his staff to take a look.

Hon. Mr. Drea: I think they are. I am willing to take a look, but were those cases brought to the attention of the ministry?

Mr. M. N. Davison: Yes, they were. Specifically, I know the first case I mentioned was because I understand the ministry was involved in that dealer being taken to court.

Mr. Simpson: That I know. Were we involved in the other three?

Mr. M. N. Davison: I do not know if you were involved in them or not, but—

Mr. Simpson: Because if those particular situations crossed my desk or the minister's



desk, there would be yelling and screaming and that dealer would be on the carpet in about 24 hours' time.

**Mr. M. N. Davison:** These cases are not unknown. To what extent they have appeared in the press, I don't—

**Hon. Mr. Drea:** I assure you we deal with things like that every day.

**Mr. M. N. Davison:** It may be that people have some reason for not coming to the ministry with cases, I don't know.

**Hon. Mr. Drea:** Because that is usually the fastest way. You are telling me about the legislation; I think you mean regulations.

**Mr. M. N. Davison:** Yes.

**Hon. Mr. Drea:** We have been moving away from the very specialized legislation and regulations in the entire field, particularly on this verbal business, because we prefer to use the Business Practices Act, which gives you awesome clout on a verbal representation.

What we are saying is: While it may be, under the Motor Vehicle Dealers Act and so forth, that is your licence, notwithstanding that if you make a misrepresentation in the course of this, or your agent does, we will treat you then—after that is done—for disciplinary purposes under the licensing section and so forth of the dealers act.

You will recall back in—well, you wouldn't recall because you weren't in the assembly then—the debates on the BPA in 1975, the car dealers and anybody who had specific regulatory legislation for the field kept the predecessor of the justice committee literally going night after night, wanting an exemption that the BPA did not apply to them. We hung tough; there was no way. Because in the BPA, primarily, we were getting at the verbal, both on the unfair and on the representation.

So in the first case, obviously that's—I don't really want to say anything about it for rather obvious reasons and neither do you.

**Mr. M. N. Davison:** I understand your reluctance. Let's take a look at the Rabbit case. That's an interesting one.

**Hon. Mr. Drea:** On the facts as you have outlined them—and that is really all you have—I am surprised at a settlement of \$400 and letting it go. Now, I understand from what you said it had to be negotiated, et cetera. Because there is no way, shape or form in this province that a vehicle being sold as a demonstrator was so fundamentally altered there was no longer a warranty.

I was wondering, when you first started, how many miles could possibly be on it or

how long it was a demonstrator until it got into the accident. Obviously in that case I am sure we would want to take some action against the dealer, because that vehicle ceased to be a demonstrator the moment it was involved in something that so fundamentally changed its characteristics that the normal protections there are with a new car—which is a warranty for a period of time—were not there. It was a used vehicle.

**Mr. M. N. Davison:** As I understand the law, it was a demonstrator.

**Hon. Mr. Drea:** I think we would like to have a little look at that one. It would have to be the courts telling us.

**Mr. M. N. Davison:** You see, that is the problem I am trying to put to you. I am not sure there is enough specific clout in the regulations. The power to make those regulations resides with you. That is why I am asking you. I may be wrong about it, not being a lawyer, but it would seem to me a reasonable thing to look at.

4:30 p.m.

**Hon. Mr. Drea:** We will look at it. I tell you I would be delighted if we had it. I'll have to check into it.

**Mr. M. N. Davison:** Plus get information back to the owners of the cars.

**Hon. Mr. Drea:** Of course, part of the terms of settlement may preclude this but anyway I would like to look at it. The first thing we would want to do is to move on it. My view and, I think, my director's view would be that we had authority to move because the vehicle had been fundamentally altered. It was no longer a demonstrator. A demonstrator is a new car that has been used for a number of purposes and it was not that.

The second thing, if the courts said we didn't have any power to do the usual, would be to write the reverse of the court decision and give ourselves the power. We have had difficulty in the past—there is no question about it—over what is a demonstrator. It is difficult. Is it a car? The car companies say the demonstrators can be vehicles their employees drive because, by driving them, the public sees them. Okay, that's a definition.

I think it is also fair to say that at one time there was a definition by mileage in the trade which wasn't the worst. Was it 6,000 miles or 4,000 miles? In any event, there was a definition of what a demonstrator was by mileage. That wasn't too bad, but then one gets into where a demonstrator has been fundamentally altered. If it is

used as a demonstrator in a race, this makes a difference.

We will take a look at your question about having to disclose what use a vehicle has been put to. By the same token, all a person needs to do to protect himself is to ask, "Has this vehicle been used as a cab or a police vehicle?" He is totally protected under the Business Practices Act, if that has been done.

**Mr. M. N. Davison:** The problem is we have to be fairly tough about these things. I am not saying you're not.

**Hon. Mr. Drea:** If somebody asked, "Was this vehicle used as a taxicab?"—police vehicles are usually pretty clearly marked—and the answer came back, "No," and some time later he found out it had been and told us, two things would happen. Number one, we would proceed under the Business Practices Act and, number two, as soon as the BPA proceeding was over, which was the remedy to the consumer, something would happen to the licensee. Unless it was something that was totally beyond his control, such as an aberrant salesman who thought it was a lark or unless there were very extenuating circumstances, there would be one less dealer in Ontario.

**Mr. M. N. Davison:** Some of these are fuzzy—the 1979 LeSabre, rebored and sold as a new car.

**Hon. Mr. Drea:** No, as far as I am concerned that one is plain. That car had been sold once to somebody. A contract had been executed. Even if the person drove it zero miles—

**Mr. M. N. Davison:** Zero. He obviously drove it home, I suppose.

**Hon. Mr. Drea:** He signed a contract. A pedigree changed hands through the Ministry of Transportation and Communications. It is a used car whether he put 100,000 miles on it or five miles on it driving it home. Bear in mind, I think a demonstrator, as part of our definition, has to be the one permit with MTC that says it is "Davison Motors."

**Mr. Kerr:** Never buy a used car from Davison.

**Hon. Mr. Drea:** Even though I might be an employee of Mr. Davison the moment it comes over to me, under title, it is a used car. I don't know what street it is in Hamilton—maybe you or Mr. Kerr can tell me—but I can tell you that the Danforth in Toronto and all of its connotations has been dead for a long time. We are not going to have this stuff again.

**Mr. M. N. Davison:** I have to tell you that to the best of my knowledge none of these four cases involved Maurice Carter Chevrolet Oldsmobile Limited.

**Mr. Kerr:** A very reputable dealer in Hamilton.

**Mr. M. N. Davison:** The other area I wanted to raise with you is also within your ministry and within your power under legislation. It deals with deposits for cars.

When one buys a house, one enters into a contract. If a lawyer has been of any assistance, there is an escape on the basis of financing. When one makes his offer and deposit, it is contingent upon being able to find financing.

Financing is a difficult area in the province and not just because of the interest rate issue itself. It is dangerous for marginal creditors. I don't want to get into a debate about that. I know the effect of the law means that women aren't as marginal as they used to be in terms of creditors. There are difficulties for young people, immigrants, people who—

**Hon. Mr. Drea:** A person who has paid cash all his life and is 65 has difficulty.

**Mr. M. N. Davison:** Exactly. It is a problem. With an automobile, the way it sits now the contracts are so tight one cannot get out of them on the basis of being unable to find credit, unless one is able to write that as a specific part of the contract. I don't know whether to describe that as a loophole because it really is not. I guess the informed consumer should be aware of that, but it seems to me to be an area where we could reasonably change the legislation.

One case that was brought to my attention involved a person who had managed to lose \$503 by way of deposit because he could not find credit. That's really unfortunate.

**Mr. Simpson:** I think it has all come back.

**Mr. M. N. Davison:** In that particular case?

**Mr. Simpson:** We solved that one, the whole amount. It was \$300 and then the balance. It has been solved, but that was a verbal thing. Mr. Davison, where there was alleged discussion.

**Mr. M. N. Davison:** That was the case where your staff was involved. Of \$503, you got back a total of how much?

**Mr. Simpson:** I think it is in two parts. I think it's all back now. I will check tonight and confirm it tomorrow but I believe somebody told me it is all back. That was a case where the consumer alleged there was a verbal agreement. It wasn't in writing but it was discussed. When those cases come in, we

spend a lot of time on them and sometimes eyeball both people. It is a case of saying, "I believe him and you are going to pay the money back." That's how most of them are resolved.

**Mr. M. N. Davison:** It is an area I think is important enough that I would like to see it up front. I would like to see it as part of the law that that's involved.

**Hon. Mr. Drea:** We have two things here. First, in the next 24 months, if not sooner, the whole nature of new car sales in this province is going to change enormously, which is why we are going to have to take a look at that act. Two things are happening, both caused by the economy.

The traditional method of purchasing a new car in a big area will be a piece of nostalgia. The traditional method was the dealer had X number of models standing on the lot. One looked at a car, said, "I like this one," and then purchased it. That has been the traditional manner. One went to a car dealer. He didn't just have an order office. If one wanted a car today, there it was and there were the keys.

That will virtually disappear within the next 24 months for obvious reasons. The credit the dealer has on that papered car has cost so much he no longer wants to have it. He can't afford the interest rates on virtually any unsold car on his premises. I know interest rates are falling but it is still extremely dicey for the car dealer.

**Mr. M. N. Davison:** That's one reason why I have raised just the question of interest rates.

**Hon. Mr. Drea:** Okay, so we are going to see fewer and fewer models of cars over the course of the year. We may see them at the end of the manufacturer's year but we are going to see fewer. We are going to be buying new cars on order. There are obviously going to be problems. There is going to be a difference. Under the old system, after putting down a deposit the vehicle was virtually there or was a day or two days away, depending upon the time of the week, from the factory in southern Ontario. That has gone.

4:40 p.m.

It probably will never come back because the second factor is that fewer and fewer new cars are being sold to individuals yearly. They are leasing direct from the dealer now, not going to a leasing company. Nobody buys any more. One leases.

**Mr. M. N. Davison:** Except for you and me. With my driving habits I am not sure anybody would lease to me.

**Hon. Mr. Drea:** You would be surprised. They are leasing for two reasons: first, the price of new cars has gone up virtually 60 per cent in two years; secondly, interest rates are no longer six per cent or eight per cent. People who wanted to buy a car in February or so paid an astronomical rate of interest compared to today. I hope that can be blended down, but I do not know. They wanted a car then and they had to have one.

They are going into dealerships and, rather than putting down money for a down payment or having to worry about reselling the car and all of the other things, they just lease from the dealer or through subsidiaries. The banks are going into this and may soon be dealing directly. One way is just to go to the bank, tell it that one will make payments of \$302 a month and they will get the car.

We are going to have to take a look at the whole deposit system. Regulations for deposits were brought in at a time when a deposit was \$50 or \$25. It was really to protect the customer, not on his money, but the fact that here was a model A that he had chosen. They said, "Come back in two days and it will be ready for you." When he came back they said: "Sorry, that one was already sold. Somebody made a mistake, but seeing you have your \$25 or your \$50 here, how would you like to try this one?" It was scaled up a bit. If a person objected in those days they said: "You have lost your deposit. If you want to go to court and fight it, okay." We then brought in the binding deposit.

Secondly, the reputable car dealers had a complaint that people would come in and make a binding deposit. They would order the car or begin to service the car on the lot, and then the person would never come back. They would say, "Where have you been?" The guy would say: "I went to the agency down the street and it was \$100 cheaper. Would you please give me my money back?" instead of saying, "I ordered a car, I am stuck for it now." It worked both ways. The section of the act and the procedures worked because ordering, buying and delivering were in a compact period of time. Those days are done.

**Mr. Davison,** because of a very unfortunate accident by a person whose driving I feel should be examined, my government car was absolutely demolished. It is a good



thing that neither driver was hurt, but there were charges to be answered, the whole thing. It took 12 weeks or more—I am sure there were layoffs—to get a replacement car. That was a North American car, by the way. The reason for that is the cars are just not there. The car dealer now is not going to have them all there. His order is going to depend on the production facilities in East Jefferson, Missouri. They are not going to keep the plant going unless they have so many orders, unless they have a little profit.

We are going to have to take a look at the whole deposit system. Next is going to be the deposit holding a leased car because the dealer does not even have the leased car.

**Mr. M. N. Davison:** I can understand that, but the point remains that I can take the minister down to lots in my riding and show him lots of new cars.

**Hon. Mr. Drea:** I do not think that will be so after this year. You can take me to a General Motors of Canada Limited lot because at the moment General Motors is subsidizing a great deal of the paper for the dealer. A Ford Motor Company of Canada Limited or a Chrysler Canada Limited dealer, particularly Chrysler, is on his own—middle ground paper.

**Mr. M. N. Davison:** I will go as far as to guarantee that, in the next five to 10 years, at the end of the model year there will be new cars on lots that people can drive.

**Hon. Mr. Drea:** I said that—at the end of the manufacturing year—but the rest of the time there will be this gap between order with deposit and all the things that can happen.

**Mr. M. N. Davison:** In the normal five to 10-year process we can talk about there will remain new cars that can be driven off the lot. The point remains that I think there should be some protection built into these contracts—so that consumers, if they cannot get financing, can get their deposit back.

**Hon. Mr. Drea:** All right, I agree with you. I will take a look at it, but here is the problem. What happens if a person says, even on a house deal or on any contract, “I want to make this conditional on financing,” and the vendor says, “No”?

**Mr. M. N. Davison:** But at least the person knows that.

**Hon. Mr. Drea:** Yes, but I just want to make it clear that I do not think there is any way you can start putting obligatory conditions in contracts saying that a car dealer

must accept an offer to purchase that is conditional on financing

**Mr. M. N. Davison:** I am not suggesting he has to. That is not the point I am trying to make.

**Hon. Mr. Drea:** I know the point you are trying to make, but I wanted to clear up that aspect so there is no misunderstanding. You cannot make it obligatory.

**Mr. M. N. Davison:** I understand. On the other hand, I do not think it is just a question of the necessity for a vague, dusty piece of legislation that says somebody can or cannot do this I think the minister and I agree these things have to be exact.

**Hon. Mr. Drea:** It is a thing in a contract. On the other hand, bear in mind that for some people, not being able to get financing can be a very good thing. They may have really overextended themselves.

**Mr. M. N. Davison:** I can testify to that.

The final case I want to raise with the minister—and then I will stop talking about automobiles—goes back to what we talked about earlier in our discussion, manufacturing faults and design faults. I am not sure to what extent the minister is familiar with this case, but I would like a commitment from him that he will go to bat on it. It deals with the faulty C-3 transmission seal, the automobile transmission design of certain Fords, and it is a particularly grotesque case in terms of money.

It involves all small Fords built between 1974 and 1978, including Bobcats, Pintos, Mustangs and Fairmonts, and it involves a defective transmission seal. The seal is too small. What happens is that over a period of time a delay develops in the engaging of the reverse gear because of this fault. It has been found to be a fault by the Automobile Protection Association, which has tested it, and by the Canadian director of the Automobile Transmission Rebuilders Association, in addition to the owners of various transmission shops who have had to deal with it.

The seal can be replaced by another seal made by General Motors, of all companies, although not by a Ford seal. It fits properly and its replacement now costs between \$100 and \$225. If you do not replace the seal, you can end up with a repair bill of something in excess of \$500, all for the sake of one part, the original cost of which was 25 cents. It is really, really a strange case.

I do not know to what extent the minister is familiar with the faulty seal, but I would like him to take a look at this situation and raise it with the appropriate people so that



something can be done for the people who own those Fords.

**Hon. Mr. Drea:** In the new car transmission field, as you know—I hope everybody knows—we, as a province, have been very closely involved with the United States government for some time in the ongoing investigation there into transmission standards. I make that vague because I do not want to preclude the case of my friend Jeff Lyons.

**Mr. M. N. Davison:** By the way, this is not a case of government legal action; it is a private class action.

**Hon. Mr. Drea:** No, I know. I am talking about the whole thing at the moment. We are involved in the work being done under the auspices of the United States government in the entire transmission standards field. I do not want to preclude his case, which has nothing to do with anything that was raised here today but which is being called and which, I suspect, will not be heard for a while.

4:50 p.m.

We do have information on that and, sure, we will go into it now. We will deal, first of all, with the United States because, obviously, if it is a problem here, there is probably work being done there.

This is what bothers me. I really feel that in matters like this we, as a province, should be able to go to Ottawa, but if I go to Ottawa I must wait until Washington or one of its agencies does something.

Having said all this, and since people do read Hansard, I suspect that I will get a terse note from Mr. Well's ministry, the Ministry of Intergovernmental Affairs, because it will have received a terse note from External Affairs on behalf of some other federal ministry to the effect that we have no right to enter into any relationship with a foreign government. So be it. But if I go the protocol route, I will be in exactly the same position as the person who has that vehicle with an apparent difficulty with the seal: I will have to wait until the matter is settled in the United States and hope the impact is broad enough that it gets some media coverage, so that we find out about it somehow.

**Mr. M. N. Davison:** By which time three quarters of the cars could be on the junk pile.

**Hon. Mr. Drea:** The other problem is that a second person may own it. Then what do you do?

Is there a monetary obligation to the first person who says, "I lost a lot of oil," or, "I

never had proper performance, et cetera, so I sold the car before I had expected to"? This is getting to be the key question now. "I had certain expectations when I bought this vehicle and, since nothing untoward happened, such as an accident or something, I should have had the use of it. I found out that this vehicle was very expensive and didn't perform therefore, I sold it at a loss. I lost 12, 14, 16 months' use of the car." He cannot prove that in court for remedies, so we will get involved in it.

As I said, I only wish we could go to Ottawa, but there is no real testing, or very little testing, of standards there. You have to hope something is done by the—is it the Federal Trade Commission?

**Mr. Simpson:** The Federal Trade Commission or the National Highway Traffic Safety Administration.

**Hon. Mr. Drea:** You have to hope it's a priority item there. If it's not a priority item there for some peculiar reason—perhaps not many of those vehicles were sold and they have other priorities—you literally have to wait.

But we will look into it and report back.

**Mr. M. N. Davison:** I appreciate that. Mr. Chairman, I have a number of other matters but, if there are members who have things to raise on this vote, I will come back to them.

**Mr. McCaffrey:** Mr. Chairman, I have a severe time problem, like Mr. Stong. He has finished his meeting with the Ontario Federation of Labour, but I am to meet with them at five o'clock. Maybe you could give me some direction. At the very least I did want to have an opportunity, while Mr. Bentley is here, to talk about pension-related matters. I suspect others on the committee would also like to do that, but it would be absurd for me to ask Mr. Bentley to come up and then have to leave in 10 minutes. Will I have an opportunity to talk with Mr. Bentley tomorrow? Will we still be on this vote, or in this general area?

**The Acting Chairman:** We will still be on this vote. That has been agreed. Two people have reserved the right to speak tomorrow.

**Mr. McCaffrey:** That being the case, I will wait, but may I ask one question while Mr. Simpson is here, just a simple question of clarification for me on the real estate area? If you have a house listed at \$210,000, just picking a number—

**Mr. M. N. Davison:** It isn't in Hamilton Centre.

**Mr. McCaffrey:** It's in Armourdale, and it's not for sale—the house or the riding. Two offers come in, one for \$209,000 and one for \$210,000. They come in at the same time. They are identical offers; neither has to do with the broadloom being in or out; they are identical. One is for \$209,000 and one is for \$210,000. Am I correct that the \$210,000 purchaser has bought a house? Is it a deal? Does the vendor have to sell at the listed offer?

**Mr. Simpson:** We went through this because of a case that arose in the Thousand Islands last year. There is something I want to look at, Mr. McCaffrey, in the Combines Investigation Act. Notwithstanding the suggestion in the combines act that you have to sell something at a published price, basically—and the drafting of the combines act some years ago seemed to make it apply to real estate—I believe that is not the case, according to some interpretation in Ottawa.

In fact, I believe that, for something that may be listed at \$210,000, if someone strolls in before your closing-off, if you will, and offers you \$215,000, you can accept that offer; you are not obliged, if someone hits bang on \$210,000, to take it.

I want to check that. It is something we researched in great detail because of some problem that arose last year.

**Mr. McCaffrey:** Mine is a genuine question based on some personal confusion. I am not asking on behalf of anybody; I am not aware of any specific case. I am an old, retreaded stock salesman, and if you offered some stock at \$22 it was sold. It was not debatable. I was always puzzled about real estate and there seemed to be some confusion, at least in my mind and perhaps in yours as well.

**Mr. Simpson:** I will try to clear it up for you tomorrow, but I have to look at that material.

**Mr. Kerr:** Mr. Chairman, I would like to get back to what Michael Davison was talking about, cars. I do not want to rehash it but I may have missed the point that you were raising.

It seems to me when you buy an automobile you have a purchase contract or purchase agreement, and in that agreement—and I think this is set out by regulation—you have to put in detail exactly what the cost is and how the purchaser of that vehicle is to pay for the vehicle; in other words, the down payment and, if there is any financing, the amount of that financing, the financing charges; the total cost to the con-

sumer of that vehicle. There is a requirement there.

**Hon. Mr. Drea:** Mr. Kerr, what Mr. Davison was talking about was the original offer where someone puts down a deposit and has 48 hours or whatever to decide. He puts a hold on the automobile.

**Mr. Kerr:** Is it irrevocable for 48 hours? Is that what you are talking about?

**Mr. Simpson:** Yes, that is a matter of contract. It is all conditional.

**Mr. Kerr:** That is a written contract.

**Mr. Simpson:** Yes. It is a matter for the two parties to decide on the terms.

**Hon. Mr. Drea:** You cannot put in the financing charge until you get the financing.

**Mr. Kerr:** What Mr. Davison is talking about, then, is a cash deal between a dealer and a consumer. That consumer says nothing in the contract about its being subject to his arranging financing through his own bank or something.

**Mr. M. N. Davison:** That is right. That is what we would like to see altered.

**Mr. Kerr:** How would you alter it? Do you mean show on the agreement that the consumer intends to arrange financing at some other source?

**Mr. M. N. Davison:** I have not given a lot of thought to how we could rewrite the agreement, or if that is necessarily the proper way to do it, but what I think has to happen is that a consumer in this situation, because of the financing problems, has to have some kind of protection. I am not sure if sufficient protection is simply information in advance. I suspect it may require a rewriting of the kinds of contracts that are used in Ontario. That is one of the reasons I have asked the minister to look into it.

**Mr. Kerr:** That is a pretty common thing in a real estate agreement—

**Mr. M. N. Davison:** Exactly.

**Mr. Kerr:** —and there is no reason why it cannot be in automobile contracts.

**Hon. Mr. Drea:** The reason it has not been used in automobile contracts—The reason it is used in real estate is that most real estate transactions are on credit. It may be respectable credit like a mortgage. But there was a time when some people did buy automobiles for cash. Furthermore with real estate, with the older house, the existing house, the thing was present. Also, you do not exactly go and shop around for houses the way people do for automobiles.

**Mr. Kerr:** The difference between automobiles and real estate is that in real estate there usually is an existing encumbrance that is assumed.

**Mr. Ruston:** In the real world around us it works all types of ways. I have seen a case where a fellow would come in and give a deposit, by cheque. We would write the contract, of course, on the condition that he could raise the money, the balance. He never came back, but the cheque was still there. It was only a \$20 deposit, by cheque. We put the cheque through the bank and the cheque bounced. That is what happens out there in the real world.

5 p.m.

**Hon. Mr. Drea:** I do not know whether you were here but I pointed out to people that one reason for the ironcladding was that the dealer received \$50—I guess now it is around \$200 or \$300—and went out and ordered. Once he orders from the factory he is in for the wholesale price at whatever Traders Group Limited or whoever is handling the paper is charging. If the person says, "I want my money back because I went down the road and this guy sold it to me for \$100 less. He had one on the lot," the guy says, "You entered into a contract with me in good faith and I ordered the car. I am stuck with the product and if, for one reason or another, you do not pay I am taking my money."

**Mr. Ruston:** I have had that happen in the store business. A fellow ordered a big furnace and after I got it in he changed his mind. What does one do? As the dealer, one suffers. One does what one can, peddles it or whatever.

**Hon. Mr. Drea:** Yes, but you ordered it. It was not something you had done something on.

**Mr. Ruston:** I ordered it for him.

**Hon. Mr. Drea:** I am saying that in the car business, because of the rapidity of sales, they are ordering every day. As far as the manufacturer is concerned once it goes on the computer the car dealer owns it. Whatever he does with it, it is, "Please remit."

We will take a look. I understand what you are talking about. As I say, it is probably more necessary now than it was in the past because of the changing nature of the way in which one will buy a deal. It is more by order than a sight selection.

**The Acting Chairman:** If no one else wishes to speak on this subject you may carry on, Mr. Davison. You said you had some other items.

**Mr. M. N. Davison:** Mr. Minister, yesterday you were visiting with some people down at the Royal York Hotel, speaking about home repairs.

**Hon. Mr. Drea:** Yes.

**Mr. M. N. Davison:** I have a couple of questions resulting from the announcement of the direction in which you are going. One comes out of that visit. This is not an exact quote so I do not know to what extent it is properly phrased. A paragraph in today's Toronto Star says, "Drea said home owners do have some degree of redress for faulty home repairs under the Ontario Business Practices Act and the Consumer Protection Act, depending on the circumstances surrounding the claim."

The impression I get when I read that is there are some defects in the Business Practices Act and the Consumer Protection Act and that by bringing in a specific piece of legislation you are going to make it tougher.

**Hon. Mr. Drea:** No, what I was talking about was in the context of what I regard as the goal of this ministry, which is prevention, not remedy. The problem with home repairs is that, having had a home repair done, one is stuck with the repair. We can do all kinds of things under the Business Practices Act, or the Consumer Protection Act or the Criminal Code, but one is still left with the civil part, which is getting the thing renovated or repaired the way it was supposed to be.

I am not suggesting we are going in any new direction. What we are doing is expanding by trying to stop things from occurring, which is always the goal. There is licensing of home repair people through the municipalities. There is the Business Practices Act that covers the entire thing. A person comes and says: "You need your chimney repaired. Look at this brick which fell off. Don't you know all the things that are going on in the world of energy? You have heard about faulty chimneys. You are playing with dynamite in your house." The home owner says, "Okay, fix it." It never needed fixing in the first place. We can get that person under the Business Practices Act but the final result may be that there is no money left to pay back the \$400, \$500 or \$600 to the individual customer.

Secondly, the person may call in a contractor. Bear in mind that one problem in this province is there are no standards for contractors other than the plumbing licence, the electrical licence, the refrigeration licence, whatever licence there is from the province. These do not testify as to the business validity



of the person but merely as to his or her competency to work in that field.

One calls somebody in and tells him there is a terrible problem with the fireplace or the wood stove—something is wrong with the draught—and one is very concerned about it. The person says he will repair it and this is what it will cost. He also says it is guaranteed. The person fiddles around and then sends a bill. It may improve the situation for a while but in four or five months one is back where one was. There is talk about guarantee and so on, but the person has departed. We will catch him in time but, once again, money has been paid out for a home repair that wasn't done properly and one is stuck two ways. One has literally to go out and get it done again. This is what we want to try to avoid.

**Mr. M. N. Davison:** I would like to leave the specifics of the home repairs warranty. I want to deal, if I can, with the general question. My impression from hearing you over the past two years is that I would characterize your belief in consumer protection legislation as preferring to have tough general acts such as the Business Practices Act and the Consumer Protection Act, instead of a plethora of individual acts. Is that fair?

**Hon. Mr. Drea:** It's government policy. It was developed at the time Mr. Clement was the minister when the Business Practices Act was brought in. Except for exceptional circumstances, it would be the last. Just before that, there was the Travel Industry Act. It was widely heralded as the last specific, narrowly defined regulatory act.

We wanted to go to the broad one because we were faced with exactly what you say—we were going to have 500, 600 or 700 of these things.

**Mr. M. N. Davison:** What seems to develop, though, is that home repairs are special. I am not sure if it is because home repairs themselves are intrinsically special or because the warranty aspect is special.

**Hon. Mr. Drea:** They are special because they have been a problem.

**Mr. M. N. Davison:** I understand that.

**Hon. Mr. Drea:** Let me trace the history of the whole thing. Home repairs—since the war if not before—has been a major problem. Prior to the start of this ministry, almost every big municipality set up some standards for home repair people. There is no licence required to be a contractor, even a new home contractor. There are licences for electricians and plumbers and there are other specialized licences.

**Mr. M. N. Davison:** There are licences for itinerant salesmen.

**Hon. Mr. Drea:** Yes, you can put out a licence for contracting. But how do you define contracting? This has always been the problem. There are those specialized licences but they testify as to trade competency at the time of issuance, not as to honesty. As Mr. Clement used to say, there can be a very competent electrician who is a crook. To get to him on licensing, he has to be an incompetent who also happens to be a crook. Unfortunately, those two things don't go together. If one is going to be a crook, one is usually very competent at the trade because otherwise one would never get any work.

The difficulty in the home repair thing is that it needs a broad, general application. In larger municipalities such as Hamilton you don't find this. There is a policing agency. It is not found in Metropolitan Toronto, Mississauga, London or Ottawa, but the minute one crosses over a line into a township there is no licensing authority. It falls under general law. Sure, you need the big one and we are enforcing the big one. Mr. Simpson can give you some answers on it. We are enforcing it.  
5:10 p.m.

What we are trying to get at, through consumer education and more industry responsibility, is banding together so that people can have confidence in a large segment of that industry so they can do business with them. If something does go wrong—and there is human frailty, a lot of things can go wrong under the most optimum circumstances—they have recourse. One gets the fly-by-nights and everybody else out of there as much as one can before they can do any damage. Under the application of the law right now, specific or general, one has to do something before that law begins to go against one. Our concern is that the home owner has something done for him.

We want to get at the preventive aspects. In no shape or form are we going to change legislation. This is a program that is without legislation. Do you follow me?

**Mr. M. N. Davison:** I don't think I misunderstand you. What I am trying to understand is what makes this case special. Is it that we are dealing with home repairs or that we are dealing with warranties specifically?

**Hon. Mr. Drea:** No, not warranties. I don't know where the warranty gets into it, except I talked about the—

**Mr. M. N. Davison:** The reason it got into my vocabulary is because you used that word.



**Hon. Mr. Drea:** No.

**Mr. M. N. Davison:** Yes, you did.

**Hon. Mr. Drea:** I talked about two different things.

**Mr. M. N. Davison:** I can tell you what the question before it was.

**Hon. Mr. Drea:** I can tell you I don't know what the Toronto Star did to it. I talked about the fact that we were in there. One aside I talked about was the Housing and Urban Development Association of Canada new home warranty program that had upgraded workmanship standards, and that we would be hopeful that by the better contractors coming together, operating under a common arrangement, guarantee and business relationship—in other words, with a seal “members of” on them—we could move in the home renovations area the same way as we had in the other one. The reference I used is that the HUDAC thing had taken the defaulting depositor-builder not only off the front page but completely out of the media because there was protection. It had taken the poor workmanship and the structural repair out of it. We wanted to do exactly the same thing with the home repair field. But it was going to take longer.

**Mr. M. N. Davison:** Maybe the problem is the way it was characterized in the story. I don't know. The thing that brought the word into my vocabulary was the lead paragraph, “Ontario plans to introduce a home repair warranty program to protect home owners from shoddy work and fly-by-night operators.”

**Hon. Mr. Drea:** No, that's not true. I am sorry, Mr. Davison. I can give you the speech.

**Mr. M. N. Davison:** It goes on to a precise quote from you, which seems to be what you are talking about, “We hope to see the majority of home repair contractors in the HUDAC organization, with a standard contract, easily understood by home repairs customers.” The second sentence in that paragraph says, “We hope to see this group develop a warranty program backed by some type of insurance bond similar to the home warranty program.”

**Hon. Mr. Drea:** Yes, but there is no way it would be a home repair warranty, per se. We want them to develop a trade group, where they will operate under a standard contract, because we have found that part of the problem in a great many cases is difficulty in communications. The person really didn't understand what he was buying. The standard contract would be helpful in that area and would also be helpful in enforcement. Heretofore, this has not been that significant a part of the building indus-

try, it has been somebody who couldn't build new houses who did this. As we progressed we would have them develop, through this, all of these protections—but not a formal legislative program as would almost be conveyed by this.

**Mr. M. N. Davison:** I think I would like to read your speech before I go further. Perhaps we can save further discussion for some time after the estimates.

I cannot resist a response to Mr. Roy's aside. Mr. Roy, you will no doubt be shocked and thoroughly informed to realize that, yes, it is important because, according to the minister, home repairs account for the highest number of complaints, after automobiles, that the ministry receives.

**Hon. Mr. Drea:** Yes, year after year.

**Mr. M. N. Davison:** Fifteen per cent of these received each year is important.

**Hon. Mr. Drea:** If I could just add to that, if you took in the complaints of the Metropolitan Toronto Licensing Commission which is very active in this, and those of the cities of London, Hamilton, Ottawa, in total they would outnumber the automobile concerns, because the automobile concerns are not directed on a split basis. They all come.

**Mr. M. N. Davison:** I have other matters, Mr. Chairman.

**The Acting Chairman:** I have nobody else on the list, so please proceed.

**Mr. M. N. Davison:** During the leadoffs I footnoted for the minister my concern about registration of shareholders of corporations in Ontario. Maybe this is an appropriate time to deal with that.

**Hon. Mr. Drea:** Should I bring Mr. Bray forward?

**Mr. Bray:** Mr. Chairman, I am Harry Bray, vice-chairman of the Ontario Securities Commission and for my pains, in the absence of a permanent chairman who is arriving July 1, I am the acting chairman.

**Mr. M. N. Davison:** I will resist any comments about this being the Bray and Drea show.

**Hon. Mr. Drea:** There are people out there in the marketplace who don't like either one of us. Sometimes we run one-two with Harold Ballard.

**Mr. M. N. Davison:** Mr. Bray, I am not sure if you were in the audience yesterday when I mentioned my concern about registration of shareholders.

**Mr. Bray:** No, I was not.

**Mr. M. N. Davison:** It dealt with the aspect of public information, the public's right to know. It seems to me important that the public has a right to know who owns companies in Ontario.

We live in a world where power is frequently power behind the scenes. I can recall, in the days when I was growing up, working in a political family. There was no provision in law for contributors to political campaigns to be known. There was always a feeling—I think this was so—that there was something wrong about that, that there were people behind the throne pulling strings and that was hidden from the public, that people were able to give large contributions secretly and somehow there was a direct access to power that was not in public life. To a large extent that perception altered with the legislation for election campaigns that was brought in during the 1970s in Ontario.

The public has, I think, a similar concern about not really knowing who makes the corporate decisions, not really knowing who owns it all. There is a feeling and, I think, a quite proper one that what happens in the world of commerce and business in terms of decisions is frequently a lot more important than what happens in the world of government, that business is as big, if not a bigger, influence than government on the way our life develops in the province.

There is a reasonably convincing argument to me, if to no one else in the world, that the public does have a right to know who owns companies because of the impact those companies have on our lives.

As I understand the Corporations Act, section 43—I could well be wrong—there are provisions for a transfer agent who may be appointed to keep a register of shareholders. It seems to me that we could move from that point, by way of legislative change, to make sure that there is a register of shareholders for each corporation operating or traded publicly in Ontario—there has to be a starting place somewhere—that is maintained by your people.

5:20 p.m.

I do not mean to imply that on any given day of the week somebody in the public can get a list of who owns a certain company by way of stock. It may be something that is updated on a yearly or biyearly basis. I would like to hear from the minister on the principle and Mr. Bray on the specific difficulties that might be involved in having such a register.

**Hon. Mr. Drea:** It is all very well to say you do not want it on a given day. From

one day to the next, not all shareholders in companies change, but certainly control can move.

**Mr. M. N. Davison:** I'm sorry. I didn't want to argue that. I tried to make that clear.

**Hon. Mr. Drea:** You asked me what the difficulties were. That would be the first one, the question of the rapid transfer and so forth of shares. When one gets down to the cost of a registry of shareholders, on the list, a guy with 10 shares out of two million issued shows up roughly the same as a large shareholder.

Maybe Mr. Bray would want to go on. I was going to mention that we have the insider list which is published; all the transactions of insiders, because that obviously is to the benefit of the prospective investor. When one sees a stock going way up, is it because it is a bonanza or are insiders doing certain things? That is published.

There are varying private reports of substantial numbers of shareholders when they are in a control position, and so forth. Perhaps Mr. Bray can comment.

The whole basis of whatever one does with shareholders is two-fold: One is to protect the shareholder who has an investment; the second is to protect the prospective shareholder. Rules, regulations or disclosures are really aimed at those two groups.

The other thing is that you did say public companies. It is sometimes startling in context to take the number of privately held corporations.

**Mr. M. N. Davison:** Politics is the art of the possible. There are beginnings for everything.

**Hon. Mr. Drea:** But anyway we will let Mr. Bray discuss this.

All I would tell you is that at one time in the past there was an attempt to allocate separate school taxes from commercial firms and from industrial or business firms. It was attempted to allocate a proportion of their tax dollars to the separate school system. It turned out to be finding out which proportion of the shareholders in terms of ownership would want their tax money put into the separate school system rather than the public school system, even in a much more convivial and happier day. It turned out to be literally impossible.

**Mr. Bray:** Actually the problem you address has been cared for. The information you seek can be obtained in the public file as to what in reporting this we call, generally speaking, a public company. It started on May 1,

1967, when insider reporting came to this province and has been expanded since.

The real control of a company is exposed first in the public files through the insider reporting requirements. That gets the report on anyone who has control of 10 per cent or more of the stock. The reports are more sophisticated than that because sometimes one can bury oneself behind a façade of companies. In the end result one gets back to a real, live human being. If there is a real live human being set somewhere back in the bushes, and the Weston empire is a good example of that, one can go back through the façade of interlocking corporations, and so on, and trace it through the insider reports to what is styled in the act as the beneficial owner.

In the proxy solicitation material which is mandatory under the Ontario Business Corporations Act, the Canada Business Corporations Act, the Securities Act and similar statutes in Canada, a requirement is there—this is on our public file as well as investor information—in that document that the real owner poke his head above the sand.

I think the problem has been addressed and there is a substantial amount of information available. If there is any change in that situation where there is a takeover bid, which is how it often comes to the fore, one gets a lot of public exposure through the documents, the takeover bid circulars and so on, where the man behind the scenes is trying to squeeze out the shareholders through what we call an issuer bid. Again you get that kind of disclosure. He has to pop to the surface and one finds out who is behind and manipulating.

There are, of course, many companies where the effective control is in management. Then there is no share control which really gives control. It is vested management that has control because vested management has control of the proxy solicitation machinery. I would be pleased to expand but, really, the problem has been addressed and, I think, anyone who wants to find out if there is an effective controlling shareholder behind a company—I mean share control—can find it in our public files.

**Mr. M. N. Davison:** I don't want you to misunderstand my point. The point is not who controls company A. The point is who are the people who have significant say by way of ownership of the way in which business can affect the lives of ordinary people. There's always a vague interpretation, I've felt, when we deal with securities, of the consumer not being the general public, but the consumer being those people who are in-

terested in these affairs. I hope I didn't misunderstand you when you talked about what information was available. You are not suggesting that, if I owned 10 shares of Dominion Foundries and Steel Limited, my name would appear on some list.

**Mr. Bray:** No. I gather you are interested in knowing who really is managing the company or influencing the company.

**Mr. M. N. Davison:** No, wrong. That information I understand is available.

**Mr. Bray:** Then I'm sorry, I don't follow you.

**Mr. M. N. Davison:** My concern is who are the people in our society who are substantial people in the economic life of our society? It may well be that they own a relatively small number of shares in any specific company. They are none the less very important people and people who potentially can exercise a fair amount of control, directly or indirectly, on things that affect the lives of ordinary people in the province. The public has a right to know who those people are.

**Mr. Bray:** I'm sorry but I thought they were known. For instance, just to use a name, the name of Conrad Black figures prominently in Argus Corporation. Now Argus Corporation, directly or indirectly, or through its restructuring, Hollinger Argus Limited, affects a lot of lives. There is a whole complex of companies but I really can't help you much more. There are a lot of listings such as the Directory of Directors. There's a good deal of information available.

**Mr. M. N. Davison:** What I'm suggesting we should have in Ontario is a list of people who own stock in a particular corporation.

**Mr. Bray:** Well, there is a list of all the significant shareholders based on 10 per cent or more.

**Mr. M. N. Davison:** There is the insider aspect.

**Mr. Bray:** That's right.

**Mr. M. N. Davison:** The people who own 10 per cent of Dominion Foundries and Steel are relatively few.

5:30 p.m.

**Mr. Bray:** The people I think you are really getting at are the managers and the board of directors which sets policy. In the end result it is the board of directors and the executive, the officers, who on a day-to-day basis I think are the people you are really getting at. They are the people who really set policy. They are elected by these 10 percenters. The 10 percenters may get



themselves re-elected if there are no significant blocks, as you suggest. It is the people who are in power in a widely dispersed company—the people who are in management and the board of directors—who have control of the proxy solicitation that one looks to with any particular company or industry, whereas in a 10 per cent or better one can look through them to the people who are able to cause them to be elected. In the end result, though, management is vested in the directors and through the directors to the—

**Mr. M. N. Davison:** Let me try it the other way around. Large companies are frequently controlled by people who hold relatively insignificant percentages of shares. We are not talking about anybody who holds anywhere near 10 per cent of the shares in some cases.

**Mr. Bray:** Mainly in Canada, the test of effective control has been 10 per cent or less. In the United States where you have much larger companies the test has been five per cent—the kind of test you are talking about, effective control.

**Mr. M. N. Davison:** The point I am making is that with a relatively small percentage, anything under 30 per cent of shares, companies can be controlled in Ontario. If we take a company that is involved in some activity that some people in our society may consider to be socially important, some specific investment and activity in a country like Chile or some specific deal with the Soviet Union during a time when there is controversy over Afghanistan, it seems to me there is a case to be made that, somehow, members of the public, or concerned individuals or organizations should have access to the people who own that company so they can try to influence them in some way. If all that is available is a list saying that these people are managers, directors, what have you, and that this particular fellow or person owns 27 per cent of the stock, then I would guess one is going to be reasonably ineffective in causing a change in that corporate policy because, to a large extent, the corporate policy has been set by the very names one would have.

There is also real corporate power in the 73 per cent of the shareholders who are not publicly known. It would seem to me that an alliance of church groups, for example, might want to go and see this that says, "Six months ago the following people owned the following number of shares," or even, "Six months ago the following people

owned shares in the company." They would then be able to engage in a dialogue with those people in the hope of altering a corporate policy. Corporations have an incredible effect on the community. That is a fairly narrow example I have offered you.

**Mr. Bray:** I appreciate your concern, but could I not suggest that when the thing is ruled by shareholders in the end result, as you say, policy can be changed at shareholders' meetings? It is very difficult. The influence one can bring to bear on these situations, these social problems, frankly is something that is being considered here and in the United States as a matter of disclosure in the proxy solicitation, in environmental concerns and that sort of thing. That sort of issue can be raised by a shareholder and an owner.

I think when my colleague, Ben Howard, joins you, you might put the question to him because it is really more that kind of a problem. It is not a disclosure problem because directors set the policy. Investment decisions of the kind you are talking about are probably made by the officers subject to the policy approval of the directors. In the end result, the directors are the servants of the shareholders.

The kinds of issues you raise are normally raised by shareholders at the meeting. The shareholder has the right to put an issue on the agenda, if you like, and I think this is where Mr. Howard can be more effective than I. I think the people you should be trying to influence are pretty well established. I appreciate your concern. It's one that has attracted our attention in relation to mandatory proxy solicitation material.

**Mr. Crosbie,** the deputy minister, has pointed out quite correctly that if one is a shareholder one has the right of access to the shareholders list. If you want to bring influence to bear through the proxy solicitation route one has to buy one share, then one can get a shareholders list and solicit in that way. There's nothing improper about that at all.

**Mr. M. N. Davison:** I'm not suggesting there is. What would be more proper, though, is if that list were available to the public, not just the holders of that particular stock.

**Mr. Bray:** All I'm saying is that from a securities and investors' point of view, there is all kinds of information. The question you address is more properly a companies question, and the companies question is really who should have access to the shareholders list and for what purpose.



**Mr. M. N. Davison:** I suppose the question really is the dialogue between the minister and me as to whether that's an appropriate principle to have in Ontario. I take it it's not something that's impossible to administer. I mean there are lists, there are a number of ways that could be done.

**Mr. Bray:** I was involved in the securities aspect when the original Ontario Business Corporations Act was put through and this is one of the issues that was raised. Who should have access to shareholders lists and for what purposes? There were concerns raised about takeovers, for instance, if a company was not being managed effectively, and it appeared to somebody that he might do a better job of managing that company, how did he solicit the very people he wanted to buy the shares from, and should he have access to the shareholders list to do that? The same thing would apply, I think, and this issue, Mr. Minister, might be raised quite properly in that context, in the context of the OBCA of which I understand a major revision is now before another committee of this House, judging from what Mr. Howard told me a moment ago.

**Hon. Mr. Drea:** We said six months ago that we were going to introduce it for first reading over the summer months for comments. It has been developed virtually in its entirety by the lawyers, by the commercial law section of the Canadian Bar Association. They have been working on it for many months. It will be introduced sometime next week for general discussion and comment. It's a very significant bill because it's bringing corporation law into modern times. It's considered to be a very significant commercial bill, not just for Ontario but for the entire country.

I understand your concern. We can look at it in a number of ways. I must say, since Conrad Black's name was mentioned, that I wish there were 10 more Conrad Blacks in the country for the 1980s. I really wish there were. I think the economy would be extremely buoyant with another 10 Conrad and Montagu Blacks.

You want to find out now that you can buy a share in a corporation and on the basis of purchasing a share you have every entitlement to find out the rest of the shareholders, whether from one share or 10 million.

5:40 p.m.

**Mr. M. N. Davison:** I think you will agree that is an unacceptable way of providing public access to that information.

**Hon. Mr. Drea:** If you want public access and you want to find out who is really involved in the company, above and beyond what you understand, you can use the public library or you can try our files. You can get the Financial Post Service. It has various volumes with the list of directors and so on. That gives you a pretty good indication of the crosscurrent of who is involved at a policy level in companies.

If you want to find out the nature and scope of a firm's operation if all you know is the name, and if you would like to see where they are involved, because of a particular concern, there is a massive, up-to-date, card index which is available at newspapers and libraries. I guess it is available at the ministry offices at 10 Wellesley Street East, in the Financial Post Corporation Service listing of companies. You can get Moody's Investors' Service. You can get all kinds of documents which reveal the innermost secrets of virtually every public company on the continent.

**Mr. M. N. Davison:** I think that's a little bit excessive.

**Hon. Mr. Drea:** If you want to find out what has been done in a company over a long period of time right down to whether it can even handle money, based upon its credit rating, there are no holds barred.

What you are advocating is that the government take each and every list of shareholders in public companies—if I understand you correctly—and that we post them somewhere at 10 Wellesley Street or make them available.

**Mr. M. N. Davison:** I think they should form a part of the records available to the public through your ministry.

**Hon. Mr. Drea:** I think we have to look at it in terms of cost and a number of other things. One always reckons the cost based upon the impact of what additional thing this would provide that is not already provided in a number of public records. Albeit, you might have to go to two or three places and do a little bit of work to obtain it or put it into the picture, but what—

**Mr. M. N. Davison:** It is available only in private records. I understand that each of these companies is obliged to have such a list and they are obliged to supply it upon demand to their shareholders. Those lists exist. It is simply a question of being required—

**Hon. Mr. Drea:** Mr. Davison, look, although by law I am required to be in blind trust, I have a very small number of shares in the Steel Company of Canada Limited. In that same blind trust that I am required to

have by law—at least before it went blind—my wife has a number of shares in a number of companies, none of them significant, none of them major. What possible use to the public would be a shareholders list that gets down to the finite of having my name and address as owning—I don't know whether it is 10 or 25—shares of the Steel Company of Canada Limited?

Now just before you go on, there are people with holding companies that, for director and power positions, depending upon the charter of the company, might well have 25 shares of the XYZ Corporation and exercise a tremendous amount of control. What we are saying to you is that the public records and the public documentation that is available, through the Ontario Securities Commission and through normal public records, is sufficient to tell you that there is no sense wasting 17 cents on Mr. Drea. You put your 17-cent letter into the hands of Mr. XYZ over here because he is in a position to alter or change or continue the policy of the company.

**Mr. M. N. Davison:** This is where I think you are wrong about Frank Drea owning 25 shares of Stelco—about what possible use could that knowledge be.

**Hon. Mr. Drea:** I didn't say that. I said Frank Drea has 25 shares and you have got to spend 17 cents to get to Frank Drea who is meaningless in the whole affair. It may be a holding company and there may be a guy in it with 25 shares or 100 shares which is just as nominal in the corporation. He sits on the board of directors and is in effective control of that company. Now, what does the list show you? It doesn't show you anything.

**Mr. M. N. Davison:** What could be important in that case, though, is if Stelco were involved in some practice that a certain group of people—say the United Church of Canada—objected to, the United Church could go through your ministry and obtain a list of the shareholders. It would find that a popular crusader owns 25 shares in this company. It would seem to me it could go and have a little visit with this person and set out to him its argument why it believes something the company is doing is wrong and try to convince this person to lead a fight at a shareholders' meeting of that company, so that policy could be reversed.

**Hon. Mr. Drea:** All they have to do is to lead a shareholders' meeting. I don't know what the price of Stelco is now, but all they

have to do is temporarily—it's not forever—buy one share of stock. They walk right on the floor. They do not need to worry if I am going to show up.

**Mr. M. N. Davison:** I do not own any shares in anything but I was under the impression that, if I wanted to buy one share of a company for \$1.50, I would have to pay some minimum fee to some broker in order to get that share. Is that right?

**Hon. Mr. Drea:** You have to compensate the person for purchasing it for you.

**Mr. M. N. Davison:** What is the minimum brokerage fee? Is there a minimum?

**Hon. Mr. Drea:** How much would it cost to buy a share, Mr. Bray? Every union in the country has a share in the companies it deals with. They have had them since time immemorial because it was the fastest way to get the report.

**Mr. Bray:** It depends what they are trading at.

**Mr. M. N. Davison:** Is there a minimum fee that you have to pay a broker before he will handle the transaction?

**Mr. Bray:** I'm sure there is.

**Mr. M. N. Davison:** Do you have a ball-park figure?

**Mr. Bray:** I haven't got it in my head. Fifteen dollars occurs to me, but—

**The Acting Chairman:** I would just like to remind the committee that we should adjourn at any moment for the vote in the House.

**Hon. Mr. Drea:** Can we take this on tomorrow? I will find out the minimum fee for you. We will go through that.

**Mr. M. N. Davison:** I think the principle is important. I would like to engage at some point in a discussion of that principle of access.

**Hon. Mr. Drea:** Yes, sure. Mr. Breithaupt is a big trader. What is the minimum charge by a security salesman for the purchase of one share of stock? When is the last time you did it?

**Mr. Breithaupt:** I don't recall that I ever did it.

**The Acting Chairman:** I don't know if there is much point in sitting now. We might as well adjourn to go to the vote in the House. But it is reserved tomorrow morning after routine orders.

The committee adjourned at 5:47 p.m.

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**From the Ministry of Consumer and Commercial Relations:**  
Bray, H. S., Vice-Chairman, Ontario Securities Commission  
Simpson, R. A., Executive Director, Business Practices Division











No. J-18

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Friday, June 13, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, JUNE 13, 1980

The committee met at 11:22 a.m. in committee room No. 1.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (continued)

On vote 1502, commercial standards program:

**Mr. Chairman:** I recognize a quorum. When we were last dealing with these estimates I believe that Mr. McCaffrey was asking some questions. Mr. Renwick also indicated a couple of days ago that he wished to speak on this vote, so I will recognize Mr. McCaffrey, then Mr. Renwick and then Mr. Breithaupt.

**Mr. McCaffrey:** Mr. Chairman, maybe I could help out a little bit. Yesterday you were unavoidably tied up elsewhere and there was another gentleman in the chair. I did indicate I would like to be first on the list for today, so that I could have an opportunity to discuss a few matters with Mr. Wells Bentley. However, I was not here for the last hour of the meeting, and I understand that Mr. Bray was up front and that others were involved. I am very happy—and Mr. Breithaupt and I have just talked about it—to let whoever was on the list complete with Mr. Bray, and I think Mr. Breithaupt and I might both have a question for that gentleman. Then I would be anxious to get Mr. Bentley up front.

**Mr. M. N. Davison:** Speaking as the person who monopolized the entire session yesterday, the agreement was that we would not deal with the commercial standards vote separately, item by item, but in a sort of jump-about fashion, so that when Mr. Breithaupt came back today he would be free to question any of those items of the vote.

**Mr. McCaffrey:** I am happy with that and I will defer then.

**Mr. M. N. Davison:** There is no one on the speakers list. Mr. Bray was answering questions from me, which I completed.

**Mr. McCaffrey:** Then it seems to me, unless Mr. Renwick has a comment, that Mr. Breithaupt perhaps—

**Hon. Mr. Drea:** In fairness to Mr. Renwick, he did reserve some time from Wednesday, which I drew to the attention of the chairman yesterday, for questions while Mr. Bray is in the chair, so that might be convenient now.

However, there is one thing I want to do, Mr. Chairman. Yesterday—and I do not know whether it is in the Hansard—Mr. Davison was inquiring into some matters which at the end—either on Hansard or off Hansard—involved the new Business Corporations Act.

**Mr. M. N. Davison:** It was off Hansard.

**Hon. Mr. Drea:** Okay. I just want to make a correction in Hansard where I used the word “introduced.” In fact, we are putting it out as a draft bill over the summer. It means the same thing, but I just do not want you to expect a bill on the Order Paper.

**Mr. M. N. Davison:** I think you did imply it would be introduced for first reading.

**Hon. Mr. Drea:** I am not going to introduce it. I am going to use a draft for the convenience of the Legislature—for one last comment over the summer—and do a formal—

**Mr. M. N. Davison:** Will a draft be available to the members?

**Hon. Mr. Drea:** Sure. We will mail it out. It just saves some time on a voluminous bill if there are technical corrections that have to be made prior to second reading. The draft is printed like a bill, looks like a bill and in all likelihood will be 99.99 per cent of the bill. It will be available in July and will be mailed out to all legislators.

**Mr. M. N. Davison:** Thank you.

**Mr. Renwick:** As the minister knows, I have been concerned about the relationship between Shane-Morgan Investments Limited, Mr. G. E. Creber and the Consumers' Gas Company from the time that the matter first came to the notice of the press. If my memory

serves me rightly, earlier this year I had gone to see the then chairman of the Ontario Securities Commission and discussed it with him and, at the same time, advised the minister of my concern about this matter.

Following that, because of shared concerns, and I think also because I had raised the matter with the chairman of the commission, the file was then transmitted, as I understand it, to your colleague the Attorney General (Mr. McMurtry) for his consideration.

During the estimates of the Attorney General, which were reported on May 1, 1980, in this committee, I again raised with the Attorney General the problems, as I saw them, in the inadequacies of, perhaps the Criminal Code; certainly, in my judgement, of the Securities Act and of the Business Corporations Act of the province. That there could be, at this late date in so-called modern corporate law procedures, this kind of failure to disclose by a chief executive officer of a company to the board of directors of the company, or publicly, the nature of the interests he had in another company which was doing business with the company of which he was chief executive officer—and which resulted in a very significant financial accretion to Mr. Creber—seemed to me, after my 15 years of sort of a busman's interest in corporate law to mean that there was no provision for the automatic repayment to the payer company of the moneys that accrued to the chief executive officer.

I do not want to repeat all of my concerns. They are, for anyone who is interested in them, in the Hansard of this committee's hearings to which I have referred.

In the light of the notice set out on page 28 of the bulletin of the Ontario Securities Commission for February 1980—following that compressed statement of facts, about which there is no dispute—I asked the Attorney General that specific consideration should be given to an amendment to the Securities Act and/or the Business Corporations Act. I wanted it to be made very clear to those in senior management positions and in the directorships of companies of all kinds, but particularly of public companies which are traded generally, that there be an automatic provision that a failure, in a fiduciary relationship, by a chief executive officer and a director of a company to disclose to his board of directors, the benefit to which he was entitled for his interest, direct or otherwise, in the contract that was being entered into, should require that any financial benefit that accrued to that person should be refunded immediately.

11:30 a.m.

The point is always made among sophisticated persons that this kind of a transaction is only a damage to the shareholder and that the shareholder may have his remedy through the intricate procedures of a representative action in the courts. The other point which is made is, "But of course, you must understand that the company received good value for the moneys paid for the services rendered."

One does not have to have a great deal of sophistication in law to know that courts will not equate dollar amounts to values of services in the first place. Secondly, it would be elementary that anybody who wanted to take a course of nondisclosure would ensure that the company got the value for the services because, otherwise, it would be outright fraud under the Criminal Code.

I am talking about sophisticated corporate managerial techniques, which still permit, apparently, a chief executive officer of a public company in Ontario to fail to disclose to his board of directors, and to have in this case—what was it?—a \$300,000-odd financial benefit that accrued to him. While it is true that ultimately there was a disagreement over this between the board and Mr. Creber, and Mr. Creber left the employ of the company, as I understand it no effort has been made to recover any money. The Deputy Attorney General did not know whether some shareholder had instituted an action.

But I do not want my concern to be deflected into that kind of question. I am asking for a specific requirement that on a failure by a director of a company to perform his fiduciary obligation to notify the board of directors of the company of any financial benefit that will accrue to him from any arrangement between himself and the company, directly or indirectly, through the intervention of some other corporate form, that there be an automatic requirement that the moneys, regardless of questions of value for services, should be automatically repayable to the company, I think that is the gist of my remarks.

Further, I would hope the minister here, in co-operation with the Attorney General, would see to it that representations are jointly made to their two colleagues in Ottawa, the Ministers of Justice and Corporate and Consumer Affairs to ask them to consider a review of the Criminal Code with respect to this kind of transaction. In today's world of sophisticated white collar operations, I think there should be some provision for this in the Criminal Code, other than the provision for

defalcation in the sense of a fraudulent transaction.

The minister very kindly said to me that the securities commission and Mr. Bray had reviewed my concerns and that he was prepared to make a statement about it today. I hope by ongoing discussion over time we might solve the problem, if it cannot be done at this moment.

I see that in the *Globe and Mail*, in the Report on Business of Tuesday, June 10, there is an article, "Management Contract to Pay McLaughlin \$500,000 Plus Five Per Cent of Profits." I may say that this case, while I have not studied it, is an extension of the same question. Although it is not a question of nondisclosure, as I understand it, it does still raise very serious questions of whether or not even disclosure is a sufficient protection in a company which is publicly held and where there is a wide dispersal of shares.

In certain circumstances the world of corporate directors may be able to approve contracts which should otherwise have been dealt with as arm's-length transactions. Individuals who are engaged in the affairs of a company should not be able, even under a disclosure system, to reap very significant financial rewards in addition to whatever their salary and other emoluments may be in their positions as chief officers of companies.

**Hon. Mr. Drea:** First, Mr. Renwick, before Mr. Bray, and perhaps Mr. Howard, discuss this, I do not accept the for-value-received concept. When one is in a position, as the person, on the surface, would appear to have been in this particular matter, to exercise significant choice in how the final service arrived at the company, that obviously precludes any concept that the extraordinary function the person was involved in was good value or not. To me it is extremely incidental. I do not regard that as the cornerstone.

This has been a very frustrating experience for us. As you know, we sought authority for charges. On the first occasion when we received the opinion of the crown attorney, we went back—am I not correct, Mr. Bray?—we went back and got a second opinion. We were told that the crown was not in a position to have the commission lay charges.

Whatever is done in terms of altering the Criminal Code is one matter, but I am very concerned about the impact upon investors and upon public confidence in public companies, when it would appear that the ultimate penalty so far in this matter is moral sanction.

As I said, I do not know whether shareholders or the public company intend to

pursue this to recover the funds. They have every opportunity to do so if they want to. That, of course, is a matter beyond our authority. But I want this kind of loophole, if you want to call it that, plugged. Whether it is easier to plug it through the Corporations Act or through the Securities Act, I intend to have it plugged.

11:40 a.m.

The Criminal Code is obviously yet another matter. I do not think I would want to rely upon a change in the Criminal Code with all of the variances there might be there.

Before one goes into criminal proceedings, I think it is obviously a civil matter and should be plugged at that avenue. Mr. Bray may want to elaborate on that.

**Mr. Renwick:** If I might just make three comments to clarify the matter. I appreciate the minister's comments about it. I have always thought of the Criminal Code as the ultimate sanction of it and I do think that the Criminal Code must be looked at to see whether or not an amendment is appropriate. But I would not be satisfied to simply leave it in that position. I think there has to be a provision in the Business Corporations Act with respect to the standard of conduct expected of directors.

I recognize that, years ago, when we finally put a standard of conduct clause in the Business Corporations Act, it was with great travail; everybody thought they would never be able to find anybody to act as a corporate director of any company because we were putting in such a strong provision. We had all sorts of representations about the effect it was going to have on the economy and so on. Of course, it had no effect whatsoever.

Now, obviously, that standard of conduct provision must be looked at very closely in order to raise it.

**Hon. Mr. Drea:** Obviously.

**Mr. Renwick:** In addition to that is the third possibility which I think is a very real one; a change in the Securities Act. Not only because of the difficulties presented in this case, but also to be certain that, at least where publicly traded securities are involved, if a shareholder does not take the action to get the money back to the company in such circumstances the Ontario Securities Commission would have some powers to require that payment as a condition of continued trading. There should be some way in which the securities commission can take some action.



I can only read between the lines, but the way the notice on the Creber, Shane-Morgan Investments Limited, Consumers' Gas Limited affair is given—I said this in the Attorney General's estimates—I wish I had been in the closet while the discussion was taking place. I would guess that the commission was less than unanimous about its authority to issue even that statement in this kind of situation, particularly when they knew there was nothing they could do except give publicity to the facts of that case.

Mr. Bray: Mr. Renwick, if I could come to your last point first; that is, the statement itself. I think frankly there was something else that could have been done, and that was canvassed. It was a question of whether the public interest demanded that it be done.

The reference is to either section 123 or 124 in the act—I have not got all the sections memorized yet myself—which would provide for a public hearing through which the trading privileges of the target, if you like, could be considered and withdrawn if the conduct merited it. The whole affair could have been canvassed in a very public way by introducing the evidence in some detail.

But the end result was the decision of the commission to make this statement. I think it fair to say the commission felt, in what was to us an extraordinary and unique situation, that some statement had to be made publicly. The dismissal of Mr. Creber and the circumstances under which he left the company had been a matter of some public comment and had been the subject of financial press comment. We felt there had to be some statement made, at least to put before the public the facts which had been obtained in the course of what is essentially a private investigatory procedure.

The problem as to what action the commission should take in any situation where the—

Mr. Renwick: May I just comment on the first part of your comment?

I have no disagreement with the decision of the commission not to have a public hearing about whether those shares should be traded or not, because that does not solve the problem.

Mr. Bray: No, Creber's right to trade.

Mr. Renwick: Oh, his right to trade.

Mr. Bray: Creber's right to trade would have been the issue. It would have been directed at the man's conduct; whether he

had abused the marketplace in some way, to such an extent that his right to trade in this province ought to be restricted or withdrawn, as it could be.

Mr. Renwick: And the decision was made not to take that action.

Mr. Bray: Because the conduct, after all, really was not in relation to trading and securities per se. It had an impact on public confidence, no question.

Mr. Renwick: Let me just explore that a little bit. Are you saying the decision was taken because there was an inability to bring it within the phraseology of the statute basically, rather than the question of whether or not the matter should be dealt with? Are you talking about an inadequacy of the statute which led to the commission to agree not to do it?

Mr. Bray: Not an inadequacy of our statute to do what is our prime directive—as you are well aware, and you are raising the issue here, Mr. Renwick—which is really essentially disclosure as opposed to enforcing minority shareholders' rights.

Our constituency, if you like, is all investors, not just the shareholders but all investors; people who are not yet shareholders as well as those who are. The minority aspects have been explored through our movement into—what would you call it, the corporate ombudsman field? This is what you are really suggesting, what you are leading into within the framework of corporate disclosure, and moving tentatively to the use of the cease-trading order. But there is no mandate, excepting insider trading, for the commission to intervene civilly.

Mr. Renwick: I think you have me confused. I am not asking anything about minority shareholders or what they may or may not do.

Disclosure is at the heart of the securities business. A failure within a publicly traded company by a senior officer to make the elementary disclosure required to his board of directors with respect to a transaction from which he will gain a private personal benefit, is a failure of disclosure I would have thought would have required the commission to be seized of the matter.

Mr. Bray: You, sir, are better aware than perhaps anybody else in this room of the fact that the rights in these matters are given through the corporations law rather than the securities law; and that his rights and responsibility rest in that law as opposed to ours. There is no mandate in us



excepting in the restricted area of insider trading.

I am not disagreeing with you as to the concern the commission had that the information ought to be available to those who needed it to make whatever decisions they are required to make under the appropriate law, that is the corporations law. As to whether a government body ought to have the power, even in this, with respect, Mr. Renwick, isolated and extraordinary case in my experience—I am not saying it has not happened or won't happen again, but it is the only one that has surfaced; the McLaughlin case which you cite is something else again, and it is one we are examining right now.

11:50 a.m.

**Mr. Renwick:** I suppose my comment is that there is a question of letting those in top managerial positions and directorships of companies know unequivocally that what you have referred to as the extraordinary case is not an extraordinary case. What this particular case, having surfaced, indicates, is that it is a risk-taking operation. If it works, you walk away with a tap on the wrist and go about your business and you pocket the gain which you have received in connection with it.

I don't think in a statute such as the Securities Act, which is founded upon the principle of disclosure, when a nondisclosure of a chief executive officer of a publicly traded company comes up it is adequate for the commission—this is not a criticism of the commission; it is a criticism of the Securities Act—to say, "Oh, well, that is not securities law, that is corporations law."

I have made it as clear as I can this morning that I think the ministry must look at the provision of the Business Corporations Act with respect to the duty of directors; must look at the Business Corporations Act with respect to the facility by which minority shareholders' rights or shareholders' rights can be exercised to get the money back to the company.

That is one aspect of it. But what must be looked at is the Securities Act to indicate quite clearly to the public in general that if persons in charge of publicly traded companies do not make disclosure when they are occupying a fiduciary position, it will result in certain action automatically being taken. It is only in that way you can in some way protect the public.

For example, if it is clearly known that in Ontario, in such circumstances as this, the law says the shares of Consumers' Gas Com-

pany will be delisted from the board, then I agree that you may be affecting the investors; but by giving public notice that is in the law, you are going a long way to ensure that the board of directors makes certain these events do not occur. The officers of those companies are going to know it is a serious offence, affecting the public distribution of securities in this province, for a particular person not to make a disclosure or, in addition to that, the penalty provisions in the Securities Act will be enforced against that person.

In other words, the breach in this kind of conduct, if it doesn't bring into play the criminal law, will bring into the play the penalty provisions of the Securities Act against the person. I am not prepared to have the Ontario Securities Commission take refuge under the Business Corporations Act and say, "That's not our business." I am not prepared to have the Ontario Securities Commission say, "There's a serious question of whether or not a public body should concern itself in these matters," when the whole guts of the securities business and the reputation of the business community is at stake in the way in which the fiduciary obligations of directors and chief executive officers are discharged.

**Mr. Bray:** I understand what you have said, Mr. Renwick.

**Mr. Renwick:** I wanted to have some expression of opinion as to whether or not there is any merit in my concern; whether or not it is a matter you will look into. Or are you saying we are going to let the Creber case go the way it has gone, it is an extraordinary one, it has never happened before, we have done what we can do; but we are not going to amend the Securities Act, we are not going to go to the federal government to ask for amendments to the Criminal Code?

**Hon. Mr. Drea:** Excuse me, I already said I was going to do the latter.

**Mr. Bray:** The Criminal Code is something else.

**Hon. Mr. Drea:** I think Mr. Bray's remarks can be interpreted within the narrow framework of the Securities Act in isolation. I have said the one approach on the Criminal Code may be beneficial, but I am not going to put all the eggs into the basket of whether or not or within what time frame or under what conditions or in what language the Criminal Code may or may not be amended.

I thought I made it very clear that this had to be approached, in addition to the

Criminal Code, within the Ontario jurisdiction and that they wanted to look at it with regard to what the appropriate vehicle or vehicles were. I don't think, regardless of the uniqueness of the matter, there is one simple, easy clause in one particular act to deal with the subject you have raised in its totality, because the subject is far more extensive than this matter. I don't think what you are calling attention to is to close the door on a duplication of this event in the future, if I understood you correctly.

After reading your remarks in the Attorney General's estimates, I understood you were talking about this matter in a very broad perspective which basically dealt with the responsibilities of directors in the manner they operated both in a company and in what they brought to bear upon that company from affiliations they had outside of it. I thought I made that clear.

Mr. Renwick: Yes, I don't want to proceed with this at great length because there are many other topics this committee has to deal with. I would like to have some confidence, assuming this parliament re-assembles in the fall, that in the period of time between now and then the minister would be able to make some statement with respect to what the government intends to do on this matter.

Hon. Mr. Drea: I can give you an informal statement right now. We are going to work on it. A statement would not be available until we come to a conclusion as to what the best vehicle is.

I just don't think you can have a business community, during a transitional time, a time of great change, where the cornerstone is public confidence—not just public confidence in the bottom line, but public confidence at the senior managerial level. Many of the changes taking place in this country now are not reflected for the investor in the history or the pedigree of the particular public company in which the person is considering investing. A great deal of it depends on his confidence in the people who are actively running it—on the given day—or who are being brought in to direct that company. There is an encouragement throughout this country for more Canadian investment to be channelled into the public company investment sector, rather than relying on investing in the United States or investing in the bond market or what have you.

I don't recall the exact words, but I believe you mentioned before that this was

the "gut" or the "core" of fundamental business conduct. I regard it as that. I want to approach it with those dimensions.

12 noon

Mr. Bray: Mr. Renwick, something we have not touched on is implicit in this. That is, and you quite properly point it out, this is not a minority shareholder situation. There are occasions when there are minority shareholders who have been abused in some way. There is where, if I may say so, we have directed the thrust of our activity over the past two to three years. We have tried to find some way of resolving the problem of that inchoate little fellow who just does not have the money to hire lawyers and take action. He has been a person to whom we have directed a good deal of attention.

In this case—and this is what is difficult and why I hesitate to say anything, really, in the policy nature—you have, on the face of it, a substantial, well-organized public company, well-funded, with a top-notch group of executives, well able to make decisions. There is a body of law that deals with this.

We are not talking about some little person who has a question about funding. The facts are on the table about Mr. Creber's conduct. There is action that can be taken, not perhaps by the Ontario Securities Commission, but by the board of directors of Consumers' Gas Company. That is the issue you and I have not addressed. Probably this is not the place to do so, but at least—

Mr. Renwick: I think it is. Implicit in what I was saying is exactly that problem. That is my problem. If I am mistaken you can tell me, but my understanding is that the board of Consumers' Gas is taking no action with respect to this matter.

Mr. Bray: All I can say is I know of no action they are taking.

Mr. Renwick: Yes. There has been a sufficient lapse of time to indicate to me that no action is going to be taken by them. I think that is the problem. When things touch home for that select world of the corporate directors in this country, you get an atmosphere which says: "It would be very unsettling to our company and our investors if we did anything significant about this. We got value from the company that rendered the services, so it is all right. Nothing further can be done."

I guess what I am saying to myself is that where a board of directors of a public trading company, in a situation where the nub of the problem has been nondisclosure

of a conflict of interest, fails to act, is it not time we say that the securities commission will act as surrogate in the interests of all of the investors in Consumers' Gas, in place of the board of directors, to enforce the recovery, if the law permits, of that money to Consumers' Gas?

**Mr. Bray:** I think you will appreciate my reluctance to make any definitive statement. There are enormous policy implications in what you suggest. From the case you have cited this morning, you might well go on to say there should be some surrogate testing of the McLaughlin transaction, if the minority shareholders are unable to do it.

Frankly, Mr. Renwick, it is a very difficult problem. I think we have moved a considerable way since the last time I had the pleasure of sitting in this committee with you.

**Mr. Renwick:** If you decide not to introduce amendments to the Business Corporations Act or to the Securities Act, or if the response from the federal government is negative, I would like to be informed that it has come to an end as far as you are concerned. If you decide to pursue it and you are making progress, fine, but at a specific point in time I would like to know what the state is. Many of these questions disappear into limbo and that is the end of it.

**Hon. Mr. Drea:** You will be informed by me.

**Mr. Renwick:** I understand. I am not suggesting you are not concerned about it. I wanted to bring it up so that we could share publicly our concern about this kind of problem.

**Hon. Mr. Drea:** But I want to tell you that you will be informed by me, because it is my overall responsibility, and not by the commission.

**Mr. Renwick:** Could I ask, just out of the blue, a couple of questions, Mr. Minister?

To what extent, and in what way, is the Ontario Securities Commission or Mr. Thompson, the registrar, involved in—Let me rephrase that: To what extent is there some Ontario responsibility with respect to Astra Trust Company?

**Hon. Mr. Drea:** We will have to break this down. Perhaps Mr. Thompson would like to join us. It is on these occasions I wish I had a QC after my name.

**Mr. Breithaupt:** That is no guarantee. Look around the room.

**Hon. Mr. Drea:** No, I'm not talking about the facts, but about just how I should describe the facts.

**Mr. Breithaupt:** You do pretty well.

**Mr. Renwick:** It is a perfect example of the interrelationship between the federal and the provincial governments in this whole field, as I understand it, and that worries me.

**Hon. Mr. Drea:** Yes, but I am talking about the fact that in some of these cases there are criminal proceedings.

**Mr. Renwick:** Yes, I understand that.

**Hon. Mr. Drea:** Do you want to identify yourself, Mr. Howard?

**Mr. Howard:** I am Benson Howard, executive director, companies division.

Before we drop the matter you raised, Mr. Renwick, you may not be aware that we have a committee of the practising bar working very hard with us on the revision of the Business Corporations Act. After the deputy brought your concerns to my attention, I sent excerpts from Hansard to them and asked them for their recommendations.

We will be continuing our reviews and studies. Perhaps it will be helpful if you could give me an outline of the type of provision you think should be in the BCA.

**Mr. Renwick:** Nice try, Mr. Howard.

**Mr. Howard:** This would give them something, at least, to work on.

**Mr. Renwick:** Some nice summer night between one and four in the morning, I will draft three or four provisions for the Criminal Code and Business Corporations Act.

**Mr. Howard:** I am only concerned about the BCA. This would be helpful.

**Mr. Renwick:** I would like to help certainly, in any way I can. That would be fine. But I would not want anyone to await my drafts. I just do not have the time.

**Mr. Howard:** I just wanted to comment that I am not aware of any situation covered by the present legislation in Canada where there would be, in this type of situation, automatic restitution. It would be very novel.

**Mr. Renwick:** The thing we are so proud of here is that we in Ontario lead in this field.

**Mr. Howard:** We hope so, and that is what we strive for.

**Mr. Renwick:** We did lead in a number of areas in corporate law reform, and I had hoped that in this case we could provide a little bit of leadership.

**Mr. Howard:** With your help with the drafting.



**Mr. Renwick:** Mr. Howard—or perhaps Mr. Bray could tell me—I would be very interested in the position of the Securities and Exchange Commission in Washington on this case, or in an identical situation to this one, which was in a very compressed form.

We could ask them: What would you have done in a situation exactly like this? I think that would be a very interesting inquiry to make. It is even one, since I thought of it, I might make myself.

**Mr. Howard:** I would have to say, "Over to you, Mr. Bray."

**Mr. Bray:** Frankly, Mr. Renwick, I think they would institute a section 10(b)(5) action, an anti-fraud action. Creber would agree to the injunction but not agree to the facts, and that would be the end of it. With great respect, those 10(b)(5) actions sound great, but they are not tried, the issues are not joined. Without admitting the facts, Mr. Creber would consent to an order. That is what I suspect would happen.

**Mr. Renwick:** I may pursue that on my own.

**Mr. Bray:** Please do. Obviously one of the remedies we had been considering was that kind of action.

**Mr. Renwick:** Let's go back now to Astra Trust.

12:10 p.m.

**Hon. Mr. Drea:** As you know, I made a statement in the House on the day two simultaneous actions took place. Perhaps Mr. Leybourne could come up here. You might identify yourself, Mr. Leybourne.

**Mr. Leybourne:** I am John Leybourne, deputy director of enforcement for the Ontario Securities Commission.

**Hon. Mr. Drea:** I made a statement about two simultaneous actions. One was instituted by the commission, and involved the filing of criminal charges against three people in Astra Trust Company and associated companies. The second was the movement of the federal government, since Astra Trust had a federal charter, into a monitoring position basically calculated to protect the depositors and the assets of Astra Trust. Perhaps Mr. Bray or Mr. Leybourne can outline what has taken place since then.

In the very same statement—and this was one of the matters I alluded to this morning when asked about it in the Legislature—I did point out that there was an ongoing investigation by the Ontario Provincial Police into additional matters concerning companies related to Astra Trust.

**Mr. Renwick:** Can you give us a little sense of the magnitude of it? How many people have been hurt? How many in Ontario? What is the magnitude of the defalcation in relation to the ordinary small investor?

**Mr. Leybourne:** I think about 300 people, more or less.

**Mr. Breithaupt:** We have the lists here, if you wish to see them.

**Hon. Mr. Drea:** Is that for Re-Mor Investment Management Corporation?

**Mr. Leybourne:** No, Astra. Astra is not—

**Mr. Breithaupt:** There is nothing wrong with Astra as such.

**Mr. Leybourne:** Are you talking about Re-Mor?

**Mr. Renwick:** No, I am talking about the group. I only have a rough sense of it, but I guess we are talking about a defalcation in the neighbourhood of at least \$15 million or \$20 million.

**Mr. Leybourne:** The charge we laid was against C and M Financial Consultants Limited, and I believe the amount there is \$3.6 million.

**Mr. Renwick:** And what about Re-Mor?

**Mr. Leybourne:** Re-Mor is still under investigation but there is every indication that may be around \$6 million—a further \$6 million.

**Mr. Renwick:** Is that the total? It is more than that, is it not? What about the individual involved in it?

**Mr. Bray:** I think, Mr. Renwick, that is a rough total. Let us talk about the pyramid, if you like.

You start with Astra Trust and a promoter by the name of Carlo Montemurro, who is the central figure. From Astra Trust you have a fund which has not been involved in any criminal investigation at the present time. They call it the Astra Agency Fund. That is the first vehicle. It is tied inextricably to Astra Trust itself and is within the ambit of Ottawa's surveillance.

Mr. Montemurro has a second company which he calls C and M Financial Consultants, and that company is the subject of the criminal charges to which Mr. Leybourne refers. The third vehicle—the fourth vehicle, really—is Re-Mor Mortgage Investment, which is now under active investigation by the Ontario Provincial Police. That is the scope of the empire we are talking about.

The activities appear to have centred on the Astra Trust offices, which, of course, gives it the gloss. In the minister's statement it was observed that one of the three parties charged



in the C and M Financial Consultants case was the branch manager of an Astra Trust office. Without saying anything more, you can make some assumptions from that fact in itself.

**Mr. Renwick:** I defer to my friends.

**Mr. Breithaupt:** I know there are a number of questions. Mr. Cunningham has much of the information with respect to the preliminary list of creditors and perhaps we could have him ask the first several questions. I have others to ask.

**Mr. Cunningham:** I realize charges are pending with these people and possibly more charges, I do not know, so I will be careful with regard to what I say in the context of sub judice.

My first question relates to why Re-Mor Investment Management Corporation was licensed only 13 days after the receivership of C and M Financial Consultants Limited, noting the relationship between that company and Re-Mor and Mr. Montemurro. I am only going on what I read here in the *Globe and Mail* and I refer to the Thursday, May 8, 1980, business section, a story by Jack Wiloughby. It says:

"The Ontario Ministry of Consumer and Commercial Relations licensed a second Niagara Falls mortgage operation owned by businessman Carlo Montemurro only 13 days after the Supreme Court of Ontario ordered another of the executive's mortgage companies into receivership.

"Re-Mor Investment Management Corporation received its licence on February 21, 1979. Last week Mr. Montemurro placed the company in bankruptcy with a preliminary estimate of \$6 million owing to 300 investors. Re-Mor estimates \$4.5 million of the debt is recoverable, but the trustee, Deloitte, Haskins and Sells Limited, of Toronto, has not completed an official estimate."

I wonder if you could help me with that. In view of the difficulties the company was facing, it certainly raises some questions about the propriety of their business conduct during that time. Why was this gentleman given this licence?

**Mr. Simpson:** Mr. Chairman, my name is Simpson, executive director of the business practices division.

The decision at that time was made by the registrar of mortgage brokers. The registrar of mortgage brokers was aware of the matters under consideration by the Ontario Securities Commission and aware of the proceedings that were coming up in the court with respect to that particular matter.

Having held off for quite some period of time making any determination in the face of the demands by the lawyers for this corporation for registration, in the face of the decision made by Mr. Justice Anderson—I want to be careful here, he did not turn down; I am looking for the right term—the motion was basically hoisted, held up, deferred, put off, because at that time the principals of the company were coming up with the kind of money necessary to put matters in order.

I can say no more than that the registrar at that time, exercising his statutory responsibility in this regard, assessed the situation and made the determination that in the face of the circumstances, in the face of how the matter might be treated down the road at our commercial registration appeal tribunal, he did not have the grounds to refuse it. He made that determination and that is how this particular corporation received registration as a mortgage broker.

**Mr. Cunningham:** Mr. Simpson, may I ask you what criteria Mr. Weinstein, the registrar of the Mortgage Brokers Act, would look to in assessing the efficacy of an application such as Montemurro's in the context of Re-Mor. What criteria does he look to under the act?

12:20 p.m.

**Mr. Simpson:** The criteria are set out. I don't have one of our registration statutes in front of me. They are standard in all the registration statutes and relate to matters of the likelihood of their being able to carry on business with financial solvency and responsibility. They look at the past; whether the individual has been bankrupt; has the individual been charged with anything, convicted of offences. They look at a whole range of matters in order to make the determinations under the general headings provided in the statute. They size up what the situation is and what the situation is likely to be concerning the matters being carried on. They make a determination in the light of all those circumstances.

**Mr. Cunningham:** I wouldn't lend this guy my lawnmower.

**Hon. Mr. Drea:** Bear in mind, Mr. Cunningham, I don't want to get into that particular hearing which is before the Supreme Court of Ontario because it is germane.

**Mr. Cunningham:** I don't want to talk about the Supreme Court.

**Hon. Mr. Drea:** Yes, but the Ontario Securities Commission went in with an in-

junction and a motion and the Supreme Court accepted the position of Mr. Montemurro's company that they could provide an orderly wind-down and that the depositors or the investors in the particular company you are talking about would be better served by the court holding it over. Now, on that basis at that time—some of those things in that proceeding are very important in the events that have followed, that is the point. It is okay to say on the basis of today he wouldn't get in the door, but on the basis of the time when he applied he was demanding a decision.

**Mr. Cunningham:** It is easy for me to use hindsight and the Globe and Mail and say I wouldn't have let him too far in the door. But there is an appeal process. I don't think your registrar was obligated, on the decision of February 8, 1979, of Mr. Justice Anderson, to give this gentleman a licence; the appeal process could have—

**Hon. Mr. Drea:** I didn't say he was obligated, but when you asked about criteria, obviously what the court was doing at that time affected the criteria.

**Mr. Cunningham:** Except that Mr. Anderson's comments—

**Hon. Mr. Drea:** Maybe Mr. Bray—

**Mr. Bray:** May I add something? I think the minister has made a point. Whether I personally would have granted registration or not is really irrelevant. But the minister's point is this: I wasn't all that pleased with the position taken by Mr. Justice Anderson on our application for receivership, but you have to understand they were able to persuade a judge of the Supreme Court of Ontario as to their good motivations: That is what they did. They were able to persuade Mr. Justice Anderson, who was a lawyer and presumably a sophisticated person, that they had some integrity and some ability to carry out the undertakings.

**Mr. Cunningham:** And they persuaded a lot of sophisticated people out of a lot of money.

**Mr. Bray:** You have to place that in context. He could have appointed the receiver and just gone in and wound up the business. Perhaps, in hindsight, that's what he might have done.

**Mr. Cunningham:** I am sensitive to that. Probably in a crisis situation you wouldn't get the kind of money for assets that the creditors possibly deserve. I am not going to push you on that. With the limited time we do have though, I am certain—

**Hon. Mr. Drea:** I want to make one point because I want to do a little bit of pushing. This whole business would never have started if a trust company charter had not been issued. This government refused a trust company charter; the federal government in its proper jurisdiction chose to issue one. This has complicated this matter in its totality. There may be no remarks about the trust company, but it has complicated this matter in its entirety for most of the people on that creditor list.

**Mr. Breithaupt:** It is my understanding, Mr. Minister, that in effect the granting of a federal trust company licence has the result of a company pretty well automatically being allowed to do business in Ontario. Even though you might not have chosen to grant that licence, once it is obtained otherwise, you don't have an opportunity to do much about it.

Secondly, of course, all those persons who are depositors or have guaranteed income certificates in Astra Trust are protected in other way by the Canada Deposit Insurance Corporation or by the assets which are in the trust company's side of it. Is that right?

**Hon. Mr. Drea:** Yes, that's entirely correct. In that matter the new federal loan and trust and our own would like to come to some common ground on the first premise. But there is great credibility in the community when one has "trust company" as part of it. That's all I wanted to say.

**Mr. Hall:** Mr. Minister, if I may, on this very subject of credibility, it has quite an effect on some of the lenders of money.

When the registrar of business granted Re-Mor permission to proceed, was there anything under the regulations requiring offices separate from an outfit such as Astra Trust? I think this has been the net some have fallen into. They have gone into Astra Trust thinking they are protected by the deposit insurance and not being knowledgeable enough to know they ended up doing business with Re-Mor and losing that protection.

I am wondering if your regulations do not or should not call for a separation of facilities of those companies that are covered and those that are not covered.

**Mr. Simpson:** If my recollection of the act is correct—I would have to check it—I am pretty sure there is not a specific section in the regulations which provides for separate offices. Without suggesting that shouldn't be contemplated, from my knowledge of this business I can say, for example, there are quite a number of major practising lawyers

in Ontario who have, as an adjunct to their practices, a mortgage broker's licence. There are certain public accounting firms in the city which have licences, including some of the trustees in bankruptcy. In some cases, it's a convenience in winding up the affairs of a corporation or something.

I am not in any way suggesting it is not something worth considering. I think we should look at it in the context of all who are licensed and all they do, but it is not now provided that there be strictly separate premises.

**Mr. Hall:** Mr. Simpson, I would break out the difference between what different types of business a lawyer conducts in his own affairs and whether he does have mortgage licences, as opposed to a body like Astra Trust which can advertise and ask them to come to their door, which advertently or inadvertently may be confusing the public.

**Hon. Mr. Drea:** Yes, but by the same token, mortgage transactions were not being handled in that manner. It was purely an investment type of technique.

**Mr. Hall:** It was an investment in a company that specialized in mortgage financing.

**Hon. Mr. Drea:** Yes, but you are asking about making them have separate quarters. Okay, you could do that, but nonetheless there is a place where their issuances will be sold. We can go into any type of financial institution and order issuances.

I understand the point you are making. At this particular moment, I just don't want to comment.

**Mr. Cunningham:** May I ask, if your officials have gone through the schedule of mortgages and investors and determined, first of all, if those properties exist and if in any way their approximate value would represent the amount of money that has been lent out on them?

**Mr. Bray:** Which ones? On Re-Mor?

**Mr. Cunningham:** I have a document which I believe is put out by the trustee.

**Mr. Bray:** Which one? Deloitte, Haskins and Sells' or the others'?

12:30 p.m.

**Mr. Cunningham:** I believe it's Deloitte; it's on Re-Mor. It has the mortgages listed—"Mortgage 100-1," and it lists the properties. Then it lists the principals and the investors whose moneys are—

**Mr. Bray:** That one really is not our investigation, but I am absolutely certain our people are assisting the Ontario Provincial Police. We can be certain that one of the

things they will have to test in deciding the nature of the conduct is the values underlying those mortgages—the way they have set them up, whether they have been puffed. We had some preliminary indication when we passed the matter over to the OPP, but I'm sure the trustee—

**Mr. Cunningham:** My recollection is they have been.

However, in view of the question very properly put today by my colleague Mr. Hall, about the possibility of the key player in this scheme possibly leaving the country for a short period of time, I am just wondering what in God's name we might do to prevent this. I do not want to pick up the Globe and Mail on Monday and find out he is in Spain or somewhere.

**Mr. Bray:** Mr. Leybourne, you might tell him about the latest development in the courts on that very point.

**Mr. Leybourne:** They appeared before the Supreme Court last Monday, and Mr. Montemurro made an application to have his passport returned. We were represented by the Attorney General's department, and one of our investigators gave evidence outlining our position.

At the end of the hearing the justice—

**Mr. Cunningham:** Justice who?

**Mr. Leybourne:** Justice O'Leary—ruled that Mr. Montemurro should have his passport returned to him.

Since that time I have contacted the Attorney General's department to discuss the possibility of an appeal. I have been informed as of yesterday that they would look at it, but they were in doubt about our grounds for appealing.

**Mr. Cunningham:** With that in mind, may I ask if we are contemplating any further charges, or if there is some—

**Hon. Mr. Drea:** As I said in the House, Mr. Cunningham, when the matter was brought forward by Mr. Hall—and I am sure Mr. Leybourne, Mr. Bray, Mr. Simpson and Mr. Thompson share the gravity of my concerns—while not taking any issue whatsoever with the decision of Justice O'Leary regarding the return of the passport for apparently limited use, it is collectively our concern, on the basis of the ongoing investigation, that the work of the investigation may very well be impeded by the lack of Mr. Montemurro's presence in Ontario.

I want to meet with the criminal law division of the Ministry of the Attorney General—I will be doing it very shortly—to see if there is a vehicle by which we can



draw to the attention of the court that, notwithstanding the provisions of bail on the charges that have already been filed and the modification of the conditions of bail last Monday on the original charges, we feel we can demonstrate that the ongoing investigation into additional matters will be impeded by the lack of presence, however short, of Mr. Montemurro in Ontario. On that basis, we will ask the courts to reconsider their decision.

**Mr. Cunningham:** Are you going to make a motion to that effect to the court—to appeal, or—

**Hon. Mr. Drea:** We will take whatever steps we can to bring that position as forcefully as possible before the courts. I assure you it will be done in the fastest possible time.

**Mr. Cunningham:** I am not going to take much more time, Mr. Chairman. It may be unfair on my part to infer that moneys that have gone to this company possibly may be out of the country, but you will certainly understand there is some suspicion among the hundreds of creditors, some of whom have their life savings tied up in Re-Mor, some of whom have invested relatively small amounts, although they may represent significant amounts in the context of the investor's net worth. You can certainly appreciate the suspicions, I suppose, that a lot of these people have.

**Hon. Mr. Drea:** It is a little more substantial than that. First of all, there have been a number of creditors' meetings in which creditors have not been satisfied with some of the answers provided to their direct questions. Secondly, there is civil litigation, I believe by the trustees and the federal government, concerning the exact status of the funds, and that particular matter might well be impeded. Third, there is the ongoing investigation into the matters you raised somewhat earlier about valuations, about existences, about a number of other things.

To do that properly and to put the creditors in a position where they can make certain determinations, I feel Mr. Montemurro's presence is required. At some future time when the ongoing investigation is terminated, then his presence may not be required. Then it is purely a matter of what the requirements will be for the bail that is being set for him to be at liberty.

**Mr. Breithaupt:** Mr. Minister, as a director of a federally incorporated trust company, I can assure you that involvement with this kind of thing is a most serious matter, as you,

of course, are well aware. I have several letters from persons in my own community, the Kitchener-Waterloo area. I would like to quote from one of them:

"My wife and I lost a great deal of our personal savings in this failure. We had a guaranteed investment certificate from Astra Trust and were convinced by the manager of the Waterloo branch that it would be just as safe with a higher rate of return on a Re-Mor guaranteed mortgage.

"I felt we were dealing with the real estate division of Astra Trust. The solicitation was done with Astra Trust letterheads in the office of Astra Trust and by the manager of Astra Trust. When I received a letter about six months after our investment in Re-Mor, saying the company was declaring bankruptcy, I contacted Astra Trust and was told by the new manager that they had nothing to do with Re-Mor; it was another company and any information would have to be gotten elsewhere."

Then, that individual comes up to the point which I suppose we all have to face, when he says: "I can understand Mr. Montemurro's actions. There have been and will be many more like him. But I am still upset at how we could be fleeced in a federally incorporated trust company, and I am still angry at the Ontario provincial government's Consumer and Commercial Relations and Mr. Weinstein for putting Mr. Montemurro right back in business after the fraud of his C and M Financial Consultants Limited."

I realize, of course, that this is the entire theme here. The comments from this individual are obviously very strongly felt; it is a difficult circumstance. It could well be that these assets, if they are allowed to mature and develop, may bring some more money to the creditors than a forced sale in the kind of distress circumstance that might occur.

To look at the numbers of investors said to be in any one project and the shares they might have, certainly shows this to be a most involved scheme. It is going to give our general financial institutions in Ontario a black eye, after we just got rid of some of those problems a few years ago in other cycles such as this.

12:40 p.m.

**Hon. Mr. Drea:** I do not want to raise any false expectations. Before this is over there is a long way to go on just what was purchased. There is some background. That person has stated a very clear-cut case, and there is some additional background. Before that matters were not so clear.



I have said I do not want to raise any expectations for debenture holders. I think Mr. Cunningham mentioned that one of the difficulties is this valuation and the unravelling to see what is there and what is not. This has already occurred as a matter of public comment at creditors' meetings. But when things become clear, regardless of the criminal proceedings which now stand, and regardless of what else occurs, when the proper time arrives, there will be a very strong Ontario government position to the government of Canada regarding the method of business, in its broadest sense, carried on within the walls of the Astra Trust offices. That is about as plain as I can make it.

**Mr. Breithaupt:** It simply must not be allowed to occur again.

**Hon. Mr. Drea:** It is not going to be allowed to occur again. I am talking about the conduct of business inside the various Astra Trust offices, particularly the offices in Burlington and Kitchener-Waterloo—just how daily business was transacted there with potential investors in guaranteed income certificates, which are insured by the Canada Deposit Insurance Corporation.

**Mr. Cunningham:** May I just ask one question? Perhaps one of your investigators would have the answer. Who are Clearwater Farms?

**Mr. Leybourne:** I think it is controlled by Montemurro.

**Mr. Cunningham:** I thought so.

**Hon. Mr. Drea:** I think you will find that many there are what is known in the trade as related companies.

**Mr. Cunningham:** What a scam.

**Hon. Mr. Drea:** I just want Mr. Cunningham to know I understand his frustration. I think it is 321, isn't it, on the creditors' list?

**Mr. Cunningham:** Yes.

**Hon. Mr. Drea:** I have heard that number.

**Mr. Cunningham:** That is what they have found so far.

**Hon. Mr. Drea:** Yes. We are far from—

**Mr. Cunningham:** They also owe the federal government money, and they owe the provincial government money.

**Hon. Mr. Drea:** Even though Astra Trust, per se, is not involved in the proceedings, we are far from being done with Astra Trust on behalf of those people.

**Mr. Chairman:** Mr. Breithaupt, I would like to point out to you that Mr. McCaffrey has been waiting—

**Mr. Breithaupt:** Yes, I was just going to suggest that, Mr. Chairman—

**Mr. Chairman:** —and this would probably be his last opportunity this session.

**Mr. Breithaupt:** I would take one moment to say to Mr. Bray that—

**Hon. Mr. Drea:** I would like to draw this to your attention. I have just been informed by Mr. Bray that the federal government has applied, this morning, for receivership of Astra. Up until now there has been monitoring and they have been in and around, but they are now asking for formal receivership of Astra, which we should—

**Mr. Breithaupt:** One would see they might feel some responsibility along the line as well, and that this would be the most opportune way to take firm control of the situation.

**Hon. Mr. Drea:** Their first venture in was, quite frankly—and we made it very clear in our statement—to protect the legitimate assets of Astra Trust, particularly the deposits and the guaranteed investment certificates, over which there was no controversy. In a supervisory or monitorial role, they have done that. But now they have taken the second step, which is the application for the formal receivership.

**Mr. Breithaupt:** We will talk with Mr. Bray another time, perhaps, on junior mining ventures, which is one of my ongoing general interests—not that I own any shares in such companies. But Mr. McCaffrey has been quite patient. We will proceed, then, with that next theme.

**Mr. McCaffrey:** It is Mr. Wells Bentley I have been really concerned about, not the fact that my time has been restricted. More important, we are left, and it is nobody's fault, with 15 minutes only. I think that is the sad aspect of it.

Am I right, Mr. Chairman—Mr. Bentley is now coming up—that at one o'clock we will complete this portion of the estimates, vote 1502?

**Mr. Chairman:** No. According to the schedule we agreed on, this vote should be carried on Wednesday, but we have the Ontario Board of Censors coming before us on Wednesday and, therefore, I trust we will be carrying this vote over to the fall.

**Mr. Breithaupt:** Mr. Chairman, another way of doing it would be to carry this vote now and carry vote 1504 next Friday. Then when we get back in the fall we can deal more generally with the schedule in the hopes of protecting some consumer interests. I do not know that we should have two votes open at the same time. It might be best to formally carry this vote this morning to

clear the air, even though there are a great variety of other themes to be discussed.

**Mr. Chairman:** Fine.

**Mr. McCaffrey:** Mr. Bentley, thank you for coming. I appreciate your time. Mr. Chairman, I am quite anxious to give Mr. Bentley an opportunity to comment here because I consider him to be one of the experts in the country in the area of pension legislation.

Can I start off with a general question? A number of us expected the Royal Commission on the Status of Pensions in Ontario—Donna Haley et al—to have completed its work by now. My last information is that it will report in October. I respect the fact that, since it was established by the Ministry of the Treasury, it will report back to the Treasury, and that any questions about the delay should be properly asked of the Treasurer (Mr. F. S. Miller).

I am concerned about the delay in general terms, but also very specifically because I think the federal speech from the throne indicated that in November of this year there will be a series of federal-provincial conferences on pension matters. If the October date for the Haley report holds, we are going to be faced with a serious dilemma, I think, an important document coming very late into the federal-provincial discussions without any opportunity for people here in Ontario, particularly MPPs, to have learned something from it or to have made comments.

Do you have any observations or comments to make on that? Is it a fair statement that this royal commission document is important for those federal-provincial meetings which are about to begin?

**Mr. Bentley:** In my view, the report of the royal commission will probably be the most important document on pensions that has come before the people of Canada. I say "Canada," even though it is a report of an Ontario royal commission. I know it is being awaited by every jurisdiction in Canada. I think it will be of vital importance for the conference which was proposed in the federal throne speech for November of this year, and I know that they are going ahead with arrangements for the meeting.

The only document, other than the Co-frentes Plus report of the province of Quebec, is the Retirement Income System in Canada, which was released about one month ago under the direction of Mr. Harvey Lazar of the Ministry of Finance in Ottawa. It is, quite frankly, an excellent study. There are no recommendations, but a number of options have been set out in

this particular report for consideration at this meeting in November.

I sincerely hope we will at least have a chance to look at the royal commission report prior to this meeting, because I think Ontario, having the largest number of private pension plans, has to have tremendous input into this particular conference. I feel very jealous about this, Mr. McCaffrey, because I think it is important for us to have the greatest input into this particular conference.

**Mr. McCaffrey:** Yes, so do I. I guess there is not very much we can do about it, given the October target date and the reality that the November meetings are scheduled. I guess that is a firm commitment, is it?

**Mr. Bentley:** As far as I am aware at the present time. As you know, I am not privy to information from the royal commission. I hear the same things everyone else hears. But I understand that its report will be available about October of this year.

12:50 p.m.

**Mr. Breithaupt:** The select committee on company law has looked into several aspects of life insurance over this past year and I hope to table our report on that topic next week, but, of course, in our studies we did not involve ourselves in pension matters in order to avoid duplication, with the hope that this material would be available to us this spring.

This summer we are looking into accident and sickness insurance to complete our studies of the life insurance topics generally. I certainly hope we will have an opportunity to look at this report before our next report is prepared, since this all fits in quite closely with an area which has been of concern and interest, not only to those of us on the select committee which I have the honour to chair, but also to other members of the House who have an ongoing interest in these financial matters.

**Mr. McCaffrey:** Can I ask a related question? While obviously the delay is of concern for the reasons Mr. Breithaupt mentioned, I think I am right in assuming that there are also some legislative amendments and changes that might well have been made by the minister in the whole area of pension benefits that have been awaiting the report of the Royal Commission on the Status of Pensions in Ontario. I think that is a fair statement.

Further to that, the number of corporations in Canada that operate in three, five or all 10 provinces and that are increasingly

frustrated by various provinces' pension legislation obviously has to be a concern to you. I guess everybody is awaiting this damned thing, but to what extent is this a problem, the different provincial pension regulations for corporations acting throughout the nation?

**Mr. Bentley:** It is a problem in this way, **Mr. McCaffrey:** Reciprocal agreements exist between provinces and between provinces and the federal government. There are the two agreements. For instance, on behalf of other jurisdictions in Canada, we supervise very close to 3,000 pension plans that may have members not only in Ontario but in another jurisdiction or in a number of other jurisdictions. We have to apply the law of that particular jurisdiction in dealing with the people who are resident in that particular province. Where there is a variance in the law or in the requirements of the law, it is very difficult for us to ensure that the protections envisaged by the legislation not only of Ontario but of the other jurisdictions are provided for the people resident in those jurisdictions.

Where variations in the law occur, as they do in certain areas between Quebec and ourselves, between Manitoba and ourselves, between Saskatchewan and ourselves, although not so much with the other provinces—we are pretty uniform with them—it not only creates a problem with respect to supervision of private pension plans but it creates, if you will pardon the expression, a hell of a problem for the sponsor of a pension plan that has employees located or working in different jurisdictions in Canada. It can be a major problem for them.

The only way we have been able to cut down the work is by having them report to only one jurisdiction, ours. We try to deal with them on behalf of all jurisdictions, so they can yell at Wells Bentley rather than having to yell at four or five superintendents of pensions.

**Mr. McCaffrey:** Can I ask you, for my own edification, to give one illustration of a serious problem between one jurisdiction to another? A related question: Is it your hope and expectation that, when all of the meetings have been held and all of the reports are in front of us, there will in fact be uniform national pension legislation?

**Mr. Bentley:** Could I answer the first part last? It is always my hope—and I am sure I speak for my minister and deputy—that we will have uniform legislation, but you also

should be aware that there are different problems.

We in Ontario supervise about one half of the private pension plans in existence in Canada. We have to be very concerned that the laws of the other jurisdictions are observed by an employer, yet we have to be flexible enough to say, "It almost meets the requirements; therefore, we can accept it," if it meets the requirements of Saskatchewan as opposed to Ontario. We have this problem constantly before us and it requires tremendous flexibility on the part of all the commissions and superintendents who operate in this field.

For instance, a problem existed with Manitoba when its legislation first came in. You wanted a specific example. In Ontario, as in all other jurisdictions in Canada, the vesting rule is the so-called 45 with 10 years of service, whereas Manitoba introduced a 10-year vesting rule with 45 and 10 built into it. In other words, the employee had to take the 45 and 10 but he had the option of taking the 10-year vesting rule.

**Mr. McCaffrey:** There was a straight 10-year option available to him.

**Mr. Bentley:** That's right. These are the kinds of differences that exist. It does make it very difficult to deal with national employers and it does require a tremendous amount of co-operation on their part and on our part to make that particular plan work, as well as to make it possible for the system to work.

**Mr. McCaffrey:** I really feel constrained, as I guess everyone on the committee does, because of the time, and I know this is a critical area for a lot of us. I have one last question, if I can just jump to the private sector for a second. I am some months out of date, but I am interested in the Canadian Life Insurance Association and its inter-company agreement on portability. How is it working and to what extent, if at all, has it been a guide and an encouragement to other private sector companies to follow suit?

**Mr. Bentley:** That is very difficult to assess. It is relatively new and there were a number of technical difficulties to work on before they could even get the program under way. I understand it is beginning to gel and it is beginning to work.

There is other experience in this particular field which may not be known to many members of the committee. In Canada, through quite a number of unions, we have



established reciprocal transfer agreements so that employees, for instance, under a union agreement in Ontario-Toronto or whatever—have rights if they transfer to the oil fields of Alberta or to Vancouver.

These reciprocal transfer agreements have been working now for a number of years. It is true that there are some difficulties with them but we have endeavoured to assist, through our own offices, the development of these particular reciprocal transfer agreements because they are certainly to the advantage of employees.

There are well over 100,000 employees now in Canada who have the advantage of these reciprocal transfer agreements. You may hear them called something like "the money follows the man," or some similar description. It just allows an employee who has been working, say in the electrical field in Ontario under a particular agreement, to move, by reciprocal agreement, to Windsor, St. Catharines, Sudbury, Edmonton, Vancouver, wherever, without any loss of pension rights. In some cases the money flows back to his home local.

At the time the person is eligible to retire, he has acquired a benefit, because of his service in various locations in Canada, through these reciprocal transfer agreements. It is a very exciting development and it is working reasonably well.

**Mr. McCaffrey:** We talk about labour mobility, and I guess we have for generations in this country, but we are at a particularly crucial point in our development as a nation now and these things have a hell of a lot more meaning than they might have had even a decade ago. It would not be inappropriate, given the fact that there is going to be a series of conferences with the Prime Minister and the Premiers over the summer, for this particular kind of issue to be on their agenda, although I guess it is flush enough right now. Is there room on the agendas that you are aware of between now and mid-September for the Premiers to speak to this specific matter?

1 p.m.

**Mr. Bentley:** First of all, from my contacts with the federal government, I understand this conference will be held in the latter part of November and that they are proceeding with the arrangements. That is all I can tell you at the present time. It has been two weeks since I have been in touch with them. However, I do keep in touch, so that when things are at a position of our being able to say, "We have to be involved from this point forward," then I should know. But at the

present time I just have to rely on contacts as the development appears to be taking place in Ottawa.

**Mr. McCaffrey:** It is one o'clock. Mr. Bentley, I appreciate very much your time and I wish—and other members of the committee do too—we had more opportunity to hear from you. Thanks.

**Mr. Breithaupt:** Before the vote carries, could I ask the minister two brief questions? The first is with respect to the Ziebart matter that I had raised. When might we expect to have some information on the rustproofing circumstances I brought before the minister, since this is generally in this vote? If we could be told what might be occurring, then we can wait until you are prepared, whenever that may be.

**Mr. Simpson:** As the minister indicated at the time of the question in the House, we have been in touch with the federal government. They sent an investigator to Toronto. Our investigators and their investigators sat last week and examined all the American Motors' print and media advertising. We are now in the process of looking at the situation as it applies to the dealers' floor, if you will, where the cars are sold, the disclosures there and the dealings with regard to rustproofing.

We have a meeting tentatively scheduled with the corporation to review the questions that have arisen from these various things within the week. Subsequent to that, we will have to make some determinations, probably with our colleagues in Ottawa, about what action, if any, is called for in the circumstances. I cannot put a specific time frame on it.

**Mr. Breithaupt:** Thank you very much. That is the information I wanted.

The second question is with respect to warranty legislation. As you know, Mr. Minister, this legislation exists in Saskatchewan and New Brunswick, but other than the draft bill Mr. Handleman introduced in 1976—I believe it was called Bill 10—we have seen no development of that theme. Are you able to tell us now whether this suggestion for warranty legislation is still an ongoing interest and when we might expect to hear further on that subject?

**Hon. Mr. Drea:** It is of ongoing interest. As you will recall, 18 months ago we embarked on a slightly different course, which was an attempt to get uniformity in proposals as well as in legislation. We served notice at that time that if we could not get uniformity we would be going on our own.



In the past it has always been the case when the draft bill or white paper or what have you is introduced, that the immediate reaction is that there be uniformity, et cetera—plus the participation by previous federal governments in attempting to get a national standard.

It is my view, just as I said a week ago today, that the time has come for a new approach on the Consumer Protection Act, that part of the work involved in that will have to deal with warranties. I do not want to leave the impression that it will be a combination bill, but in the total approach, as I outlined last week at some length, dealing with various aspects of consumer protection and ranging all the way from the specific regulatory law on up to the de-regulation, we are certainly going to have to include warranty legislation in that approach.

It is also my hope because of the very grey area at the moment in enforcement of standards—which I touched upon the other day because of the court cases—that now is the time for a joint federal-provincial approach, at least in the short term, to delineate those responsibilities, so we can move forward in areas like this. I hope it doesn't, but it may become part of the deliberations on the British North America Act. I do not want to wait until the culmination of the deliberations on the BNA Act. There is plenty of scope and plenty of room to move forward, provided an agreement on delineating can be reached.

**Mr. Chairman:** Mr. McCaffrey, I would appreciate your taking the chair so I can raise just one issue with Mr. Simpson and with the minister.

**The Acting Chairman (Mr. McCaffrey):** Fine, Mr. Philip.

**Mr. Philip:** It seems as though every year we are having problems with a different company, on which you and I have copious volumes of correspondence with Housing and Urban Development Association of Canada. This year the culprit seems to be Clearside Investments Limited. They built a series of fairly luxurious homes in the range of \$100,000 to \$125,000, \$135,000 or perhaps even \$150,000, in my riding, on Turpin Avenue and New Love Court in Rexdale. Is Clearside Investments presently building elsewhere in Ontario at this moment?

**Mr. Simpson:** I cannot answer that specifically, Mr. Philip. I believe they are not. The conversations I have had with the warranty

corporation about this would not indicate it. It is a fairly small builder, as I understand it, but I will be happy to check on that and get back to you. I don't believe they are.

**Mr. Philip:** There is a lot of construction going on in the riding at the moment. I have checked with various owners of new homes, and the only one we are having problems with at the moment is this one. It distresses me that every year we seem to have another one. They come in and there are no problems with the homes constructed by 90 per cent of the builders; or if there are any they are minor problems.

You and I have copious correspondence on this fellow. One of the constituents actually went to some legal expense and filed in the judicial court of York against Clearside Investments. I am wondering if you know of any cases of people going to lawyers and paying money out of their own pockets, rather than going through the HUDAC warranty system, or going to HUDAC through you, via their MPP?

**Mr. Simpson:** No. Almost invariably people, when they are not happy with the program, find their way to our offices or to the office of the minister. There are various arrangements provided under the statute—that is in the informational material—to solve things, rather than to face the problem of hiring a lawyer and going to court. You and I and everybody else prefer the straightforward approach. You make the builder fix it. If the builder does not fix it, you get HUDAC to fix it. Nobody should have to go to any expense to get it fixed.

As to New Love Court: yes, you and I have had a conversation about it. I have had a conversation with the warranty association about it. I am meeting top management of the warranty association on Monday morning, and this is on the agenda. If after June 30 we do not have a clear pattern of action or communication on whatever is still deficient, if we do not have something under way that satisfies us all, I would hope you and I and the top management of the warranty association will be taking a walking tour of that particular area to find out what is the matter and what is yet to be done.

**Mr. Philip:** It would be very helpful to get everyone in those particular two or three blocks together to meet HUDAC, and to meet you particularly, because I find, for whatever reason, when I write to HUDAC directly I do not get as efficient a reaction as when I write to you directly. That may be your persuasive powers, or the minister's, over the Housing and Urban Development Association

of Canada, but I certainly appreciate what you have done. I know you spent a lot of time in dealing with this matter, and writing back and forth to me.

1:10 p.m.

I would like to ask the minister a question related to this whole area. It seems to me we get specific problems related to building corrected, invariably through copious amounts of correspondence and countless meetings, and I deal with the particular constituents at the time. A lot of time is taken up by Mr. Simpson, who does a pretty good job and does his darndest to get things straightened out, but there is the whole area of what is not covered under the HUDAC program. I have run into a number of incidents—the latest one involves this particular project, which happens to be in Etobicoke, and we have another one in North York—where the grounds are not covered under the HUDAC home warranty program.

I'm wondering if you have spent some time with the Minister of Intergovernmental Affairs (Mr. Wells) to discuss if there might be some way in which we can address ourselves to that problem. The builder comes in; he puts in insufficient drainage systems. Perhaps the standards are not high enough at the municipal level, but suddenly problems occur either in the backyards of the people who have bought the homes; or in the North York situation the flooding takes place in the neighbours' yards, as a result of the building. Then you have to go the whole municipal route.

It would be so much easier if there were one body that could handle all the problems related to the construction and the failure of the builder in that particular construction project.

**Hon. Mr. Drea:** I honestly don't know how you get around the drainage thing. The specifications for the subdivision or for the individual house must be filed with the municipality. If the drainage is put in underground improperly, there are obvious remedies. But we get very few of these, fewer than some years ago. I believe the municipalities, by and large, are becoming much more sensitive to not just approving by design when it comes to surface grading.

Realistically, the municipality has issued a building permit. The municipality has issued it on the basis of the site being the proper site. The municipality is simply going to have to enforce its end of the thing, because the HUDAC home warranty program is not financed by the general taxpayer, it is financed by the person purchasing the structure and the builder who has built the structure.

To then say suddenly all the grading—which may have been done by somebody under contract to the municipality directly, never involved with the construction—should be involved with this warranty plan gives me some concern, because the person may have cut the swale backwards. Where was the municipal inspector when the swale was cut backwards? The municipality can't surrender all its responsibilities, any more than you would say if the road or the roadway somehow deteriorates we should incorporate roadways in HUDAC, because these are built to municipal specifications. If they are not built to the specifications, the municipalities have remedies and hold back money, et cetera.

But I agree with you, there should be one port of call. Where there is a substantial drainage problem it's in a grey area, so then I guess the province becomes the one port of call and we'll sift it out.

But it would not be in the best interest of the individual purchaser to have all of that in there, although on the outside it looks as if it might. It would make it extremely complicated. Also it would raise the insurance premiums somewhat, which would give me some concern. But if you want one port, we will do it.

I'm not faulting municipalities when I say they have some responsibilities and I just don't think they can say they are clear because the house is insured or the design was appropriate or what have you. In view of the fact that they are subsidized enormously in their building work by HUDAC, which does pay on a chargeback basis for inspections and so forth, I can't see why the inspector can't be there.

I'm dazzled by the fact—and I accept human frailty—a bulldozer operator can do a thing the wrong way, but everybody says, "Gee whiz he did it the wrong way and you say you were never there."

They say, "We looked at the design and the design was according to engineering standards."

Well, who was the bulldozer operator on that particular day? Was it somebody who filled in and, if he's like me, didn't know the difference between one end of a plan and the other? He just cut the thing and then some time later you find out that all is not correct.

We don't get too many of them, Mr. Philip.

**Mr. Philip:** All right. I don't want to prolong the debate because of the time, but I do think the way of cutting down on the

problem of the premiums is to get some people out of the business who just shouldn't be in the business.

**Hon. Mr. Drea:** Oh well, let me tell you—I thought I read it off the other day—how many are out of the business now?

**Mr. Simpson:** Seven hundred and fifty.

**Mr. Philip:** I think you'll find they will come back in some other form—

**Hon. Mr. Drea:** No, they don't.

**Mr. Philip:** We really don't know.

**Hon. Mr. Drea:** Mr. Philip, on that one I can assure you—

**Mr. Philip:** They can form another corporation under another name and get back into the business.

**Hon. Mr. Drea:** No way, Mr. Philip; when they try to reapply the HUDAC home warranty registration is identical to the investigation by the liquor licence board. All the way up the arm. You don't disappear today as the ABC Building Company, unfrocked because you owe them money, and show up as the BCA with you as a minor league partner. I tell you, those guys are—

**Mr. Philip:** I'm pleased to hear that, but maybe some of the examples we brought out during the debate on the Condominium Act have made some impact on the ministry.

I would like to deal with one last question. I find, in dealing with HUDAC, and I think Mr. Simpson has been provided with copies of my correspondence and I've written directly to him in many instances, with photocopies of HUDAC's correspondence to constituents, there seems to be a certain lack of consistency in some of the judgements by the inspecting officers. In one case, the inspecting officer says a certain thing is covered and it really should be covered and it should be fixed up; then a year or a year and a half later he gets a letter saying: "Well, that isn't really covered. It was only moisture on your wall; it isn't a full drainage problem. There isn't enough water coming into your basement to justify it."

I really wonder about the consistency in these judgements, when one inspector can say one thing and the other inspector can say another. In one case, we actually ended up with an order that the builder dig up the wall. He digs up part of the wall, redoes the foundation, or coats the foundation again; and the inspector comes back when there is still leakage and says, "Well that isn't covered," when he was required to do the other corner for exactly the same problem. I find a lack of consistency in some of the

judgements being made by HUDAC inspectors.

**Mr. Simpson:** Mr. Chairman, Mr. Philip. The warranty association will be the first to admit that in the evolution of time they have adjustments to make. They started with quite a number of people all over the province who had a variety of experiences, most of them in the building business, as inspectors, perhaps from Canada Mortgage and Housing Corporation and various other things, all of them bringing a different experience, a different perspective, perhaps a different specialty because of the kinds of things they have done in their careers.

1:20 p.m.

They recognize too that there is a need to handle people with great consideration. They have not been the best in their correspondence and communication. I am not telling tales out of school; they will admit it. Secondly, they recognize a need to deal with people on an even-handed basis. I can assure you, that in terms of turning over staff, changing staff and changing their organization, they are embarked upon a number of initiatives which will bring that about.

I have had many discussions with them. My favourite subject is moisture and windows. I have had meetings with them and I am virtually on the point of asking for a seminar on the subject, because it is the most difficult subject imaginable and it is one where there is a very provocative dialogue, if you will, between HUDAC and the home owners. Quite frankly, many times the problem occurs because people have sealed up their houses and they have kettles and the bath going, and the result is not the fault of the builder.

I am just telling you this by way of an indication that they are aware of the problem and that we are aware of the problem. They are working on it. I think we will see the question of the standards and the applicability of judgements settled. It is being settled now.

**Mr. Philip:** One last point: My understanding is that things must be up to par by June 30. Is that what you said?

**Mr. Simpson:** I am suggesting that we look to June 30 for action. I do not think we can assume that everything will be fixed, but we will have a clear course of action. If we do not, then we will be out looking.

**Mr. Philip:** Then you will be paying a visit to Rexdale and we will have a special party for you.



**Mr. Simpson:** Of course, the top executives of HUDAC have to do the work too.

**Mr. Philip:** Fine. Thank you. I will resume the chair.

**Mr. Breithaupt:** Mr. Chairman, I presume we will carry vote 1502 now with the understanding that Mr. Swart may want to bring up some consumer pricing themes in the fall. I am sure he can talk about consumer pricing under another vote.

**Hon. Mr. Drea:** He was doing that under vote 1501, which was passed yesterday.

**Mr. Breithaupt:** I was just saying "probably." I don't know whether he is finished or not.

**Hon. Mr. Drea:** He wanted to play the drum.

**Mr. Breithaupt:** I realize that. The only point I want to raise is my personal hope that we will see progress on Bill 118, the Registered Insurance Brokers Act.

**Hon. Mr. Drea:** Listen, I spent most of my waking time last night, notwithstanding the intensity and the furore of the rhetoric inside the Legislature, working on all and sundry.

**Mr. Breithaupt:** Good.

**Hon. Mr. Drea:** Legislation time now has suddenly been made available on Wed-

nesday. I don't know what the progress of the House was this morning.

People talk about Bill 118 being very thick, but as I said a week ago—and you have read it—it may be thick in terms of pages, but, really, it is around one basic theme. It is not a bill that has to be examined in microscopic detail, clause by clause. I am really doing my best because I don't want this to be a consideration for the House. The House leaders have to make up their minds on it.

I have a very vested interest in it. I have a potential significant budget overrun because of the licensing season in the fall, notwithstanding even an agreement on a fee-for-service concept.

**Mr. Breithaupt:** I passed along my own views to the government House leader last night. I spoke to my House leader this morning and he said it is still not on the list of bills they must have before they leave.

I hope that can be changed because I am ready to go ahead at any time. We certainly support the bill and we are looking forward to getting it into place.

**Hon. Mr. Drea:** I am available. We of the government are available at any time.

Vote 1502 agreed to.

The committee adjourned at 1:25 p.m.



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No. J-19

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# **Legislature of Ontario Debates**

## **Official Report (Hansard)**

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Wednesday, June 18, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, JUNE 18, 1980

The committee met at 10:13 a.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

**The Acting Chairman (Mr. Swart):** I see a quorum. Ed Philip has asked me to substitute for him today as the chairman, and I also have quite a number of substitutions on the committee. Eric Cunningham is substituting for Alf Stong, James A. Taylor for David Rotenberg, John MacBeth for George Kerr, Michael N. Davison for Ed Philip, David Warner for Ed Ziemba, Fred Young for Tony Lupusella and Jim Breithaupt for Mr. Roy.

We have a special order today. We are on vote 1504, but by resolution of the committee last Friday we are to have witnesses from the Ontario Board of Censors with us today for questioning by the committee. That resolution reads as follows:

"That the committee set aside Wednesday and Thursday of next week to inquire into the procedures of the Ontario censor board, that the witnesses give evidence under oath and that the members of the board and such other witnesses as the committee determines be invited to appear."

I would ask, therefore, the members of the censor board to come forward to the table at the front. I understand Mr. Sims is ill, but if the other members of the censor board would please come forward to the table, and also fill in these first seats where there is room.

### CHARGES AGAINST COMPANY OFFICIALS

**Mr. E. Cunningham:** Before we deal with the board of censors, I wonder if I could, on a point of privilege if you would allow it, ask the minister to bring us up to date with the details surrounding the circumstances of Mr. Carlo Montemurro, the president of Astra Trust, leaving the country.

**The Acting Chairman:** The resolution which is before us says we deal with the one

issue today. Is it the wish of the committee that we review this other matter?

**Mrs. Campbell:** It is a matter of urgency, I think.

Interjections.

**The Acting Chairman:** I think I had better have it in the form of a motion, because I see a difference of opinion which should be decided by the committee in light of the resolution that was passed last Friday.

Mr. Cunningham moves that the minister bring the committee up to date with the details surrounding the circumstances of Mr. Carlo Montemurro, the president of Astra Trust, leaving the country.

Is there discussion on the motion?

**Mr. M. N. Davison:** I would agree to the motion if it is possible to put a four minute time limit on the discussion.

**Mr. J. A. Taylor:** Before you start, Mr. Chairman, I am bringing in a message to you that there are a group of people on the stair steps who are urgently awaiting your attendance to have your picture taken.

**The Acting Chairman:** I am afraid that is rather difficult at this time. Mr. Rowe, would you like to take the chair for a moment? Just before he takes the chair, are you ready for the question?

Motion agreed to.

**Mr. E. Cunningham:** I wonder if the minister could formally bring us up to date with what he understands to be the facts leading up to the leaving of the country of Mr. Montemurro, the president of Astra Trust?

**Hon. Mr. Drea:** As you know, the matter of Astra Trust was discussed on Friday, both in the House and in estimates. In the estimates and in the House I expressed the gravest of concerns that in an appearance before Mr. Justice O'Leary on a modification of bail hearing, the Supreme Court issued Mr. Montemurro his passport back on the basis of his having to travel to Spain on urgent business. That application was opposed by the crown for a number of reasons.

The Ontario Securities Commission was in receipt of Mr. Montemurro's passport at

that time. Immediately upon the conclusion of the estimates, I consulted with the Deputy Attorney General, and Mr. Leybourne, the chief enforcement director of the securities commission, consulted with either Mr. Morton or Mr. Black of the criminal law division, whoever was there.

The Deputy Attorney General and his chief prosecutors worked diligently all Friday afternoon to have a sufficient reason that the courts would accept for a new hearing to postpone the departure of Mr. Montemurro. They came to the conclusion there was nothing they could put before the court that had not already been before the court.

10:20 a.m.

The bail application was objected to quite vehemently by the crown for three reasons: First, because of the nature of the charges; second, because of the fact there was the ongoing investigation and Mr. Montemurro's presence was required for that; and third, because the trip to Spain was not necessary, it could have been handled by a Spanish solicitor. The court disagreed on all three matters.

While that was going on Mr. Montemurro arrived at the Ontario Securities Commission's office and demanded his passport. Obviously, under the terms of the court order we had to provide him with his passport.

On Monday, Mr. Montemurro called the Ontario Securities Commission saying he was in Buffalo, New York and would be back in Ontario that day. Subsequent to that, Mr. Montemurro called again, long distance, saying it was from Buffalo and telling the commission that he was about to catch a plane to New York City to connect with a plane to Spain, but he would certainly be back within "a couple of weeks."

In order to avoid the obvious question, the procedures under which we would have Mr. Montemurro's whereabouts checked at all times in Spain are very lengthy and cumbersome. There is a hearing where certain of his properties supposedly are to be auctioned off. We will try to ascertain if he attends that event.

**Mr. E. Cunningham:** When is the court date for the charges that are pending against him?

**Hon. Mr. Drea:** I think it has been bound over until the fall assizes. He assures us by telephone that he will be back in a couple of weeks.

**Mr. E. Cunningham:** Okay; I wait that with great anticipation. It's nice in Spain, isn't it?

**Hon. Mr. Drea:** I went through this just a moment ago. The procedures to have his whereabouts checked in Spain are very cumbersome. They would take more time than a couple of weeks. We will make every effort to ascertain whether he does attend the business event which the court granted him permission, as a businessman, to attend. Obviously, I am not happy. Obviously, the member is not happy.

**Mr. M. N. Davison:** Since the time limit has elapsed, we are back to the regular order before the committee.

On vote 1504, public entertainment standards program; item 2, theatres, lotteries and athletics commissioner:

**The Acting Chairman (Mr. Swart):** Mr. Davison moves that members of the Ontario Board of Censors be called to testify in the following order: Mr. J. Cunningham, Miss W. Enright, Mrs. R. Sexton, Mr. D. Walker, Mr. J. Walker, Mrs. M. Brown; and, if he has recovered before the conclusion of our hearings, Mr. D. Sims.

**Hon. Mr. Drea:** Before you go on, could I just interrupt for a moment? I just want to get the status of Mr. Sims clarified. When I said he was ill, there is a medical opinion about his attendance here; I will file this letter from the heart specialist with the committee.

**The Acting Chairman:** Do you wish to speak to that procedure first? We have a motion before us. Is there any discussion?

**Mr. M. N. Davison:** I am sorry, I thought the minister had some other point. I would like to speak to my motion. I think it is appropriate. When I reviewed the record in Hansard, it was clear there are a number of question raised by my comments and by other comments at that time to which the administrative component of the board should have an opportunity to respond, in all fairness. I believe it would be fairest if, through the questioning of the five non-administrative members of the board, we were then able to put before the administrative members, the total package of concerns I have and the concerns other people have. Therefore, I suggested that the administrative members of the board, in fairness to them, testify last. When I picked the order for the five non-administrative members I simply went in alphabetical order.

**Mr. Williams:** First of all, could we have the medical letter read into the evidence please? I would like to hear the basis on which the chairman of the board is not

available, and then I would like to speak to the balance of the motion.

**The Acting Chairman:** The letter is from Gary D. Webb, MD, chief, division of cardiology, Wellesley Hospital:

"To whom it may concern:

"re: Mr. Donald Sims.

"Mr. Sims has been a patient of mine since 1972. Consequently, I am familiar with his long-standing cardiac problem and believe it inadvisable for him to be exposed to undue emotional stress which can be anticipated and avoided. In particular, I have advised him against exposing himself to such stress during the next few weeks prior to his retirement from his current occupation, a circumstance which in itself always involves distress and disruption. If required, and with Mr. Sims' permission, I would be pleased to provide detailed documentation as to the basis for my concern and advice."

It is signed by Mr. Webb.

**Mr. Williams:** With regard to the order in which Mr. Davison has suggested the witnesses be called, I can't accept the logic of his reasoning put forward for proceeding in that order. I think it would be totally inappropriate not to hear first and foremost from the person who would be deemed to be the spokesman for the board in the absence of Mr. Sims, and that would be the vice-chairman of the board. I believe that is Mrs. Brown. I think it would only be appropriate that we be afforded the opportunity as a committee to have a statement from the senior spokesman for the board and to—

**Mr. M. N. Davison:** On a point of order, Mr. Chairman.

**Mr. Williams:** I'm speaking to the motion. I don't know what's out of order, Mr. Chairman.

**The Acting Chairman:** I'll hear your point of order.

**Mr. M. N. Davison:** The instructions of the committee as set forward in its motion last Wednesday are quite clear. Members are here to testify before the committee, not to make statements.

**Mr. Williams:** I fully understand that, but I'm sure they will be making many statements arising out of the questions that will be asked throughout the morning.

If I might continue, Mr. Chairman, it seems to me that it would be to the advantage of the members of the committee to hear from Mrs. Brown; and if it's sug-

gested that they are not here to make statements, I would insist that we have an opening statement from the board to gain an appreciation and understanding of what the procedures of the board are in dealing with the editing or so-called censoring of films.

It's my recollection that this is the very substance and purpose of the hearing this morning, to gain an insight into the procedures of the Ontario Board of Censors. There's no better way to gain that insight than to have a detailed presentation of those procedures presented to us, and the person best qualified to do that would be the senior spokesman for the board.

For those reasons I think it would be inappropriate to pursue the order of hearing from witnesses as proposed by Mr. Davison. I would suggest that the order be reversed, and I would amend the motion accordingly so that we would hear from the vice-chairman of the board first and the other witnesses in reverse order.

10:30 a.m.

**The Acting Chairman:** Mr. Williams moves an amendment that we hear first from the vice-chairman of the Ontario Board of Censors.

Does anybody else wish to speak to this?

**Mr. Breithaupt:** Mr. Chairman, I should advise we will support Mr. Davison's motion and we will move against the amendment.

**Mr. J. A. Taylor:** I don't understand why we should be hidebound to follow any particular procedure. Surely there's a motion with some substance. If we want to deal with procedures, why don't we determine as we go who we want to hear next? Why would we want to tie ourselves down to a certain alphabetical procedure?

**The Acting Chairman:** I see no further indication that anybody wants to speak, I'll call the question. The question will be on the amendment.

**Mr. Williams:** One further observation: In the event that the members of the board are all going to have an opportunity to speak this morning, I would hope there would be equal opportunity provided timewise so that all those members would be able to address their concerns and personal views to the committee. I'm wondering how you could monitor that situation to ensure they would have equal opportunity, because—

**The Acting Chairman:** We will deal with that at a later time. We are just considering the order at this time.

Amendment negated.



The Acting Chairman: We will now have the vote on the original motion which sets out the order.

Motion agreed to.

The Acting Chairman: Mr. Minister, did you have something further with regard to procedures that you wanted to mention?

Hon. Mr. Drea: No, why would I?

The Acting Chairman: Mr. Cunningham, I wonder if you would come and be sworn in.

Mr. Joseph Cunningham, sworn.

Mr. Breithaupt: You are 59 years of age and were appointed to the Ontario Board of Censors on September 1, 1975. Is that correct?

Mr. J. Cunningham: No, that's wrong.

Mr. Breithaupt: Perhaps you could correct me then.

Mr. J. Cunningham: It was 1968.

Mr. Breithaupt: Is that when you were appointed to the theatres branch?

Mr. J. Cunningham: That's when I joined the censor board, yes.

Mr. Breithaupt: What was your occupation before then?

Mr. J. Cunningham: I was vice-president and general manager of a company in Toronto.

Mr. Breithaupt: What did that company do?

Mr. J. Cunningham: We franchised beauty salons and health services.

The Acting Chairman: I wonder if you could please speak a little louder. Some of us are having a little difficulty hearing you.

Mr. J. Cunningham: We were in the franchise business, beauty salons and we also were involved in the health club business.

Mr. Breithaupt: How did you become appointed to the censor board?

Mr. J. Cunningham: I resigned from my position and shortly after that Mr. Silverthorne approached me and asked me if I would consider joining him on the board. I refused. He came after me about six or seven months later and suggested again that I do it. I decided to try it out for a few months and I eventually stayed on right up until this moment.

Mr. Breithaupt: Were you one of the three members of the board who voted for no cuts in the film *The Tin Drum*?

Mr. J. Cunningham: Yes.

Mr. Breithaupt: In general, what are the procedures that you have undergone with respect to—

Hon. Mr. Drea: I am not attempting to impede the member, but I just want that question noted. That is the first time that, to the best of anybody's knowledge, a member of a quasi-judicial tribunal which arrives at a decision has been asked how he voted.

Mr. Breithaupt: Since you are the first person before us, what, generally, are the procedures which are used by the board? In passing a film, where the distributor either does not object or—

The Acting Chairman: Mr. Cunningham, I understand that Hansard is not picking you up at that microphone. For the time being at least, I wonder if you could move around to this side in place of Mrs. Brown. Perhaps, Mr. Breithaupt, for purposes of the record you should start again.

Mr. Breithaupt: I will proceed with the question I was going to ask. I presume most of the other material is available or has at least been recorded by the secretary to the committee.

Mr. Cunningham, as the first member of the board before us, would you explain to me in general, the procedures for passing a film, where a distributor either does not object or subsequently agrees to the elimination requested?

Mr. J. Cunningham: May I get back to the remark made by Mr. Drea? Do I understand that I am under oath here and I am protected; in other words I am not in violation of my civil service oath?

Could you repeat the question, please?

Mr. Breithaupt: Yes; in general, what are your procedures in passing a film where the distributor either does not object or subsequently agrees to the elimination requested?

Mr. J. Cunningham: First of all, we view the film in the screening room. We make notes during the process of the film. At the end of the film we normally take a vote or have some discussion about the film. We then make out a small slip indicating that the film is classified such and such; general, adult or restricted. If we have a question of eliminations we make out a sheet marking down the eliminations and in which section of the film these eliminations take place. We then submit this report to the office manager.

Mr. Breithaupt: Do you keep a notebook which records the various votes as a daily diary of the work that you do?

Mr. J. Cunningham: Yes, we do.

Mr. Breithaupt: What are the procedures if a distributor refuses to agree to the classification which the usual group of three have come up with?



**Mr. J. Cunningham:** I think the first contact with the distributor is by phone and is an informal contact. He is informed of the decision. If at that time he objects and informally raises objections, these objections are relayed to the board members and perhaps we will discuss it again. Perhaps we'll change our minds, perhaps we won't. Under the Theatres Act the distributor, of course, has no legal right to appeal the decision, but as a rule we give the distributor the courtesy of coming up and arguing his case before the board members.

**Mr. Breithaupt:** Is that case argued before all the board members or just before the panel that had seen the movie?

**Mr. J. Cunningham:** I would say just before those who had seen the movie and made the decision.

**Mr. Breithaupt:** If that decision is confirmed does the matter then go to the entire board if there are objections which are not resolved?

**Mr. J. Cunningham:** On many occasions we have viewed a film and if the distributor has objected, or even if the distributor has not objected, we make a request that the balance of the board, the other members, see that film before we can come to a decision.

**Mr. Breithaupt:** Would the whole board see a film or at least be involved in the procedure before a final decision is reached?

**Mr. J. Cunningham:** Not in every case.

**Mr. Breithaupt:** Would all the members of the board at least initial or approve in some way the documentation that would show complete agreement with respect to each decision?

**Mr. J. Cunningham:** No, just the members who screened the film will be making the decision, unless there was some reason for the other members of the board being asked to screen the film; and then, of course, it would be the entire board.

10:40 a.m.

**Mr. M. N. Davison:** I find it a bit uncomfortable to talk to Mr. Cunningham's back. Just ignore me completely, Mr. Cunningham, except for my voice and speak into the microphone. I appreciate the difficult circumstances surrounding the attendance of members of the Ontario Board of Censors before the committee.

I want to establish to some extent the chronology involved. The initial submission from the distributors was on April 17. When

was the viewing date of the panel for the film *The Tin Drum*?

**Mr. J. Cunningham:** Are you asking me when I first viewed it?

**Mr. M. N. Davison:** No, when did the original panel first view *The Tin Drum*?

**Mr. J. Cunningham:** I didn't see it originally. I believe it was April 13, but you would have to check it with those who did see the film.

**Mr. M. N. Davison:** Going back to the general procedure, the panel then arrives at some conclusion or discusses what might be proper cuts in the film. Was that done in this case, to the best of your knowledge?

**Mr. J. Cunningham:** To the best of my knowledge, what happened in this case was the three members who viewed the film thought it was fitting that this film be screened by every member of the board. I don't think they came to a decision on the day that they screened it.

**Mr. Breithaupt:** Does it happen quite often that they would wish not to make a decision and have the entire board see the film?

**Mr. J. Cunningham:** Quite often, yes.

**Mr. M. N. Davison:** Who are the three members of the board who first viewed it as the panel?

**Mr. MacBeth:** May I interrupt here? I'm a little concerned at the procedure in some of these inquiries of this nature. I have just been watching the interrogation and it starts off with Mr. Breithaupt, then passes over to Mr. Davison. I think in fairness to the witness it would be only right that one person should be making the inquiry at a time, rather than interrupting. I've seen this in the past and I want to jump on it in a hurry because I've seen us do it before. It's most unfair to the witness to have questions coming from all angles, particularly when some of them are coming from behind one's back. I would suggest that we let one member carry on his questioning and then pass to another member, rather than a variety of members interrupting during the proceedings.

**Mr. M. N. Davison:** If Mr. Breithaupt has further questions, I am quite willing to let him ask them before I go ahead.

**Mr. G. Taylor:** Could the passing go through the chairman also? I didn't know whether they were working a tag team here or not. It might be better if they passed it on to the chairman.

**Mr. Breithaupt:** I have a number of other questions, but I don't want to monopolize—

**Mr. M. N. Davison:** Why don't you complete your questions, Mr. Breithaupt?

**The Acting Chairman:** I thank you for your intervention, Mr. MacBeth, but point out that frequently there are supplementary questions which are in order. I ask members to direct them through me if they have supplementary questions.

**Mr. MacBeth:** I have seen it happen on other committees where it gets pretty confusing for the witness to have all members jumping in and asking—

**The Acting Chairman:** Please direct supplementary questions through me. Mr. Davison, would you continue?

**Mr. J. A. Taylor:** On a point of order, Mr. Chairman, before we get too deeply involved here. Is it your intention to conduct this hearing, if I might call it that, in accordance with the terms of the resolution that was adopted by this committee? It is to inquire into the procedures of the Ontario Board of Censors. I ask you that because I want to know what latitude you are going to allow the members and what type of control you expect them to exercise? I can see where we might not finish this hearing within two days if we are going to expand the parameters of the inquiry.

**The Acting Chairman:** My understanding is that so far the questioning has been in order with the resolution that was passed by this committee.

**Mr. J. A. Taylor:** I am not questioning what has transpired so far. I was wondering what your perception of our chore was.

The other thing is, at some time will you be indicating just how the censor board is established, what its duties are and how it comes to pass that its members seem to be wearing two caps, one in terms of members of the censor board and the other as civil servants? There are matters such as this that I am interested in, and I don't know whether that comes within the precise terms of the motion. I was wondering if there would be some explanation of matters such as that.

**The Acting Chairman:** I think any questions relative to those matters can be asked, and if the censor board feels it is not competent to answer then the minister can be involved in answering some of those questions.

**Mr. M. N. Davison:** The reason I want to ask my questions on the procedures of the board in the context of *The Tin Drum* is very simple. It deals with the statement the minis-

ter made in the House on June 2, 1980 in response to questioning from Mr. Breithaupt about the procedures of the board. He asked if the minister was satisfied that they had been properly carried out. The minister's response was, "In this case, yes, I am sure." I want to ask a large number of my questions regarding the general procedures of the board against the background of *The Tin Drum*.

**Hon. Mr. Drea:** For the record, I still am.

**Mr. M. N. Davison:** Mr. Cunningham, who are the three members of the panel who originally viewed *The Tin Drum*?

**Mr. J. Cunningham:** I believe Miss Enright, Mrs. Sexton and Mr. Jim Walker.

**Mr. M. N. Davison:** When did the case of *The Tin Drum* first come to the attention of the full board at a meeting?

**Mr. J. Cunningham:** April 21, I believe.

**Mr. M. N. Davison:** In what way did it come before the board, Mr. Cunningham?

**Mr. J. Cunningham:** I was given the information that three members had screened this film and thought it would be advisable for the balance of the board to view the film.

**Mr. M. N. Davison:** Was that at the meeting on April 21? Or was it some time between April 13 and April 21 that you became aware of their opinion that the whole board should see it?

**Mr. J. Cunningham:** It was on April 21 that I became aware of it.

**Mr. M. N. Davison:** Okay. Was there a meeting of the whole board on that day?

**Mr. J. Cunningham:** There was a partial meeting; but no, not really. I screened the film that day for the first time with other members.

**Mr. M. N. Davison:** Did you screen it with the other members of the board at that time?

**Mr. J. Cunningham:** Yes, I did.

**Mr. M. N. Davison:** As of April 21, had all members seen the film?

**Mr. J. Cunningham:** I believe so.

**Mr. M. N. Davison:** After April 21, when did the board next meet to discuss *The Tin Drum*?

**Mr. J. Cunningham:** On April 22, I believe, there was an informal discussion and the board members were polled as to what their opinions were on the film.

**Mr. M. N. Davison:** When you use the word "polled" and the word "informal," do you use them in the context of a meeting of the board where members of the board are sitting around a table?

**Mr. J. Cunningham:** My recollection is that after I had screened this film I had occasion to be out of the office. I was downtown. The following morning, Mrs. Brown came into the screening room and asked me if I would go along with these cuts and I said, "yes."

**Mr. M. N. Davison:** You answered earlier in our—

**Mr. Williams:** I missed the answer to that. You would go along with—

**Mr. J. Cunningham:** With the eliminations.

**Mr. Williams:** Are you speaking in the singular or the plural when you say elimination.

**Mr. J. Cunningham:** Eliminations, in the plural.

**Mr. Williams:** How many eliminations were you talking about?

**Mr. J. Cunningham:** Four.

10:50 a.m.

**Mr. M. N. Davison:** Mr. Cunningham, as I understand the chronology to this point, on April 13 it was viewed by Enright, Sexton and J. Walker and in their opinion they thought the entire board should see it. Up to that point there is no recommendation as to any cuts. By April 21 all members had screened the film. On April 22 you had a conversation with Mrs. Brown and she presented you with a sheet of—

**Mr. J. Cunningham:** No, I didn't have a conversation with Mrs. Brown. It is very difficult to put this into perspective.

**Mr. M. N. Davison:** I know it is difficult. I appreciate that.

**Mr. J. Cunningham:** We had a general discussion about the film, and at that time I expressed the opinion that if we went on precedent—and that precedent I would compare to previous decisions—then the film would have to be rejected. There was some discussion about eliminations, not too much. We never got down to discussing specific eliminations.

On April 23 I was presented with the elimination sheet, recommending that the distributor agree to four cuts. I initialled that sheet.

**Mr. M. N. Davison:** The discussion on April 22 involved no recommendation. You were not presented with an elimination sheet of four cuts. Four cuts were not mentioned on April 22.

**Mr. J. Cunningham:** They were mentioned, but not firmly. Other matters were mentioned, too.

**Mr. M. N. Davison:** Is it your opinion that Mrs. Brown prepared the elimination sheet with four cuts on it that you saw on April 23?

**Mr. J. Cunningham:** Is it my opinion?

**Mr. M. N. Davison:** What did you think at the time? Who did you think at the time had prepared that elimination sheet?

**Mr. J. Cunningham:** I presumed it was a consensus of the board to go along with four cuts, four eliminations.

**Mr. M. N. Davison:** As a result of the conversations on April 22?

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** And on April 23, then, you told Mrs. Brown that you concurred with four cuts.

**Mr. J. Cunningham:** Mrs. Brown made the points to me in the screening room and asked me did I concur; I said, "yes."

**Mr. M. N. Davison:** In an earlier response to Mr. Breithaupt's question, how many cuts did you say you voted for?

**Mr. J. Cunningham:** I said, "four."

**Mr. M. N. Davison:** When I heard you respond to Mr. Breithaupt in his question, the answer I thought I heard, Mr. Cunningham, was "no cuts."

**Mr. J. Cunningham:** That's right.

**Mr. M. N. Davison:** I am having a little difficulty then. Let's go through the chronology. We will come back to the "no cuts."

On April 23 you said yes to the four cuts. When did the board next meet to discuss the film?

**Hon. Mr. Drea:** The media and everybody else seems to be somewhat confused about this. I think Hansard will show that Mr. Cunningham said that his original position was that the film, on the basis of precedent, should be rejected. He then proceeded into eliminations.

**Mr. M. N. Davison:** If there are some questions as to Mr. Cunningham's testimony at the conclusion of questions, perhaps the minister then would care to ask Mr. Cunningham some questions.

**Hon. Mr. Drea:** I am not asking him any.

**Mr. M. N. Davison:** As for myself, I would like to follow the chronology through.

**Mr. G. Taylor:** On a point of order, Mr. Chairman, I would agree with the minister. I am confused because he said "no cuts," "four cuts"; and now back to "four cuts."

**Mr. M. N. Davison:** That may become clear if we follow through the chronology. I indeed hope so.



**Mr. J. Cunningham:** I merely answered the questions that were put to me.

**The Acting Chairman:** Order, please. Mr. Davison has the floor. I presume he is going to pursue that; and somebody else will have the opportunity to do so later if he does not.

**Mr. J. A. Taylor:** On a point of order, Mr. Chairman: As I understand it this committee is to pursue the procedures of the Ontario censor board. Does the censor board have written procedures or does it not have procedures? If it does, I would like to know what they are, and then I would like to know whether there was any deviation from the procedures?

**Mr. M. N. Davison:** If you stick around, maybe I could read the guidelines into the record for you.

**Mr. J. A. Taylor:** I am reading your motion—

**Mr. G. Taylor:** To the point of order; if I could summarize his testimony so far he has no procedure whatsoever at this point.

**The Acting Chairman:** Mr. Davison has the floor. It is my understanding from the resolution that was passed that you may question the witnesses with regard to procedures—it does not say with regard to general procedures of the board—with regard to an individual film or whatever the situation is. It is to deal with procedures, and Mr. Davison has the floor.

**Mr. J. A. Taylor:** The procedures of the Ontario censor board.

**The Acting Chairman:** It is to inquire into the procedures of the Ontario censor board. It is my ruling that Mr. Davison is doing exactly that at the present time.

**Mr. M. N. Davison:** Mr. Cunningham, I am sure you are finding this as difficult as I am. After April 23, when did the board next meet to discuss *The Tin Drum*?

**Mr. J. Cunningham:** May 1.

**Mr. M. N. Davison:** Would you tell me what the discussion was on May 1?

**Mr. J. Cunningham:** We discussed the film and took a vote.

**Mr. M. N. Davison:** And took a vote. A vote of the board has been characterized in Hansard for this committee on Wednesday of last week as a straw vote. Do you take straw votes?

**Mr. J. Cunningham:** What do you mean by a straw vote?

**Mr. M. N. Davison:** Not a real vote.

**Mr. J. Cunningham:** It was my understanding this was a very definite vote.

**Mr. M. N. Davison:** Okay. Are those votes by secret ballot or by show of hands or in what fashion?

**Mr. J. Cunningham:** They are quite open. The chairman sat at the head of the table and asked each member what his vote was.

**Mr. M. N. Davison:** What was the result of that vote?

**Mr. J. Cunningham:** Three members voted for four cuts, one member voted for one cut, and three members voted for no cuts.

**Mr. M. N. Davison:** Do you understand that conflicts with the information put before this committee by the Minister of Consumer and Commercial Relations?

**Hon. Mr. Drea:** That's not correct. It's exactly what was put forward, at all times and in every essence, either in the House or here. I don't know what you are getting at. There was no decision reached at that date, not by the ministry or not by the board, but certainly the chronology of the figures was released to the press. That has been out there for some time. You tell me what is different from what I said. You are great at this, now just tell me.

**Mr. M. N. Davison:** I have a copy of Hansard. I don't want to take the time to go through it now. Perhaps—

**Mr. J. A. Taylor:** The accusation is on the floor.

**Mr. M. N. Davison:** Just a moment. My colleague, Mr. Warner, will look through it so that we do not waste the time of the hearing. When he finds the section that deals with the minister's analysis of the votes I will read it into the record. If I am wrong, I will apologize.

That was an open meeting, Mr. Cunningham. Would you tell me who the three members of the board were who indicated they supported four cuts on May 1?

**Mr. J. Cunningham:** Three members indicated four cuts, not four members.

**Mr. M. N. Davison:** The three members who indicated four cuts—would you please tell the committee who they were?

**Mr. J. Cunningham:** It was Mr. Sims, Mrs. Brown and Mr. Douglas Walker.

**Mr. M. N. Davison:** Who was the one member who supported one cut?

**Mr. J. Cunningham:** Mr. Jim Walker.

**Mr. M. N. Davison:** For the record, who were the three members who supported no cuts?

**Mr. J. Cunningham:** Miss Enright, Mrs. Sexton and myself.



**Mr. M. N. Davison:** What was the one cut supported by Mr. J. Walker? Which scene?

**Mr. J. Cunningham:** I think that is a question better put to Mr. J. Walker.

**Mr. M. N. Davison:** I understand your concern regarding my question, Mr. Cunningham. For the purposes of a question, I intend to ask Mr. J. Walker later and raise it with the minister later. I would like to have your recollection. If you have difficulty remembering what the cut was, I can understand that. If you know what the cut was, I would like to have an answer.

11 a.m.

**Mr. J. Cunningham:** I believe the cut was the scene in the bedroom where a man and woman were on the bed involved in some sort of activity and the young man, Oskar, appeared in the room while this was going on. He became so annoyed and so incensed that he jumped on top of the man and started beating him with his drum.

**Mr. M. N. Davison:** I saw the scene and I am familiar with it. Thank you very much.

Let's go back to the general procedures. A vote of the board need not be unanimous. I take it that a majority carries.

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** I see that there are then four possible cuts. As we go through the cuts, on three cuts we have three votes, on no cuts we have three votes, and on one cut we have four votes. Is that your reading of the cuts? Am I correct?

**Mr. J. Cunningham:** That might be a matter of interpretation. The way I have it here three members voted for four cuts, one member voted for one cut, and three members voted for no cuts at all.

**Mr. M. N. Davison:** Assuming that the scene of boy watching the couple was among the four cuts—

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** —we then have three cuts on which three members of the board agree and one cut on which four members of the board agree.

**Mr. J. Cunningham:** That's right.

**Mr. M. N. Davison:** And then three other members don't want any cuts at all.

**Mr. J. Cunningham:** That's right.

**Mr. M. N. Davison:** I take it then that the result of that decision, if you go by majority votes, is that there should have been one cut in the film.

**Mr. J. Cunningham:** I would presume so.

**Mr. M. N. Davison:** Yes. When did the board next meet to discuss *The Tin Drum*?

**Mr. J. Cunningham:** On May 7.

**Mr. M. N. Davison:** Would you like to tell me what happened at that meeting?

**Mr. J. Cunningham:** There were two items on the agenda. The first item was a request from Mr. Crosbie to Mr. Sims to get the board members' opinions on the idea of a rotating board. The second item was to have a vote on *The Tin Drum*.

**Mr. M. N. Davison:** I am sorry, Mr. Cunningham, you are going to have to repeat your answer.

**Mr. J. Cunningham:** There were two items on the agenda, as I recall. The first item was raised by Mr. Sims. He had had a request from Mr. Crosbie to get the board's reaction to a rotating board and he asked for our opinion. The second item was to have a final vote on *The Tin Drum*.

**Mr. M. N. Davison:** Could you tell me, what was the result of that final vote on *The Tin Drum*?

**Mr. J. Cunningham:** Three people voted for no cuts, one for one cut, and three for four cuts.

**Mr. M. N. Davison:** The same vote result. I assume the same people voted in the same fashion.

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** So at that time we also have what in effect is a majority decision in favour of one cut.

**Mr. J. Cunningham:** I would presume so.

**Mr. M. N. Davison:** Did you find that the agenda was a little unusual, Mr. Cunningham? Did you feel at all intimidated by the agenda?

**Mr. J. Cunningham:** I thought the priorities of the business were rather unfortunate.

**Mr. M. N. Davison:** I agree with you; they were incredibly unfortunate.

**Mr. G. Taylor:** Could you enlighten us on that? You used two words and nothing happens.

**Mr. M. N. Davison:** You are free to ask Mr. Cunningham further questions about that. I think it speaks pretty clearly for itself.

**Mr. G. Taylor:** He has not answered anything. On a point of order Mr. Chairman, through you. The member gave him two questions. He calls a meeting "unfortunate."

We do not even know what took place at the meeting.

**The Acting Chairman:** Mr. Cunningham has a right to answer in his own way.

**Mr. G. Taylor:** I wish he would.

**The Acting Chairman:** If you wish him to elaborate he may, but he has a right to answer in his own way.

**Mr. M. N. Davison:** Mr. Cunningham, did you feel intimidated personally by the agenda and the way it was presented?

**Mr. J. Cunningham:** Yes, I did.

**Mr. M. N. Davison:** Thank you very much. When did the board next meet to discuss The Tin Drum?

**Mr. J. A. Taylor:** If someone says he is intimidated, could he not elucidate on that?

**Mr. M. N. Davison:** You can feel free to ask questions when it is your turn.

**Mr. J. A. Taylor:** If you are trying to get at the truth then let us do it. Let us understand what is going on.

**Mr. M. N. Davison:** I have no objection to Mr. Taylor—

**The Acting Chairman:** Mr. Taylor, you may ask a supplementary now. You may ask through the chairman.

**Mr. J. A. Taylor:** Okay. I will ask, Mr. Chairman, through you, if Mr. Cunningham would explain what he meant by "intimidated."

**Mr. J. Cunningham:** Are you asking me this question now?

**Mr. J. A. Taylor:** Yes, I am asking you that question now.

**Mr. J. Cunningham:** I felt my position on the board was put on the line. If I did not stick to my original decision of three cuts the light might shine upon me.

**Mr. J. A. Taylor:** The light might shine upon you?

**Mr. J. Cunningham:** Yes.

**Mr. J. A. Taylor:** Would you explain that? Not being in the film industry—

**Mrs. Campbell:** Spotlight, he means.

**Mr. J. Cunningham:** I felt if I went along with the four cuts that my job would not be in jeopardy.

**Mr. J. A. Taylor:** I see. Thank you.

**Mr. E. Cunningham:** I would like to ask a supplementary if I could, Mr. Chairman. Were you led to believe your job was in jeopardy?

**Mr. J. Cunningham:** I think the reference to a rotating board was an indication that the

board was going to change somewhat and that possibly I would be somewhere else.

**Mr. E. Cunningham:** Who would give you that indication?

**Mr. J. Cunningham:** That was just the feeling I got from the mention of the matter of the rotating board.

**Mr. E. Cunningham:** And that was raised specifically at the same time the vote was taken?

**Mr. J. Cunningham:** It was raised before the vote was taken.

**Mr. McCaffrey:** I have a supplementary, Mr. Chairman, for clarification. In spite of this feeling of intimidation—I just want to make sure I understand this correctly—you did not change your mind?

**Mr. J. Cunningham:** No, I did not.

**Mr. Williams:** I have a supplementary, Mr. Chairman.

Mr. Cunningham, had this concept of a rotating board been put before the members of the board prior to this meeting of May 7?

**Mr. J. Cunningham:** Officially?

**Mr. Williams:** Officially or unofficially.

**Mr. J. Cunningham:** A rotating board had been mentioned to me by Mr. Sims on various occasions whenever we were having discussions about decisions that might be made. I told Mr. Sims the prospect of a rotating board did not put any pressure on me whatsoever.

**Mr. Williams:** You say this had been done on numerous occasions, that Mr. Sims had raised it on numerous occasions?

**Mr. J. Cunningham:** On other occasions.

**Mr. Williams:** Can you recall approximately on how many occasions this had been prior to the May 7 meeting?

**Mr. J. Cunningham:** Not discussed, mentioned.

**Mr. Williams:** Mentioned.

**Mr. J. Cunningham:** I would say at least twice.

**Mr. Williams:** At least twice. Had it ever been on the agenda of a formal board meeting prior to that date?

**Mr. J. Cunningham:** No.

**Mr. Williams:** But it had been discussed. Had it been discussed by Mr.—

**Mr. J. Cunningham:** It had not been discussed. It had been mentioned to me.

**Mr. Williams:** On at least two occasions.

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** Are you aware whether it had been mentioned by Mr. Sims to any or

all of the other board members on previous occasions?

**Mr. J. Cunningham:** I do not know. You would have to ask the other members.

**Mr. Williams:** You do not personally know whether he had discussed it. Had he discussed it, on an informal basis, at a general meeting when all members were present?

**Mr. J. Cunningham:** No.

**Mr. Williams:** So he discussed it only with you on a one to one basis.

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** On at least two previous occasions.

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** And you let it be known to him that whether there is a rotating board or not would not in any way influence the way in which you made decisions on films?

**Mr. J. Cunningham:** I did, yes.

**Mr. Williams:** So how would you feel intimidated on this particular occasion if you had told him that on two previous occasions?

11:10 a.m.

**Mr. J. Cunningham:** Because there had been a tremendous build up over this whole business of The Tin Drum. The atmosphere in the building was just overpowering. I felt they were bearing down on us. I just got the impression when he brought up the matter of the rotating board they were more or less saying: "This is it. If you go along with this now you won't have to worry about the rotating board." I am giving you my gut feeling.

**Mr. Williams:** Did you raise with Mr. Sims this personal uneasiness you felt at the time it was on the agenda—that you felt it was inopportune?

**Mr. J. Cunningham:** No, I did not.

**Mr. Williams:** So it is simply something that you harboured as your own personal feeling and did not make known to the other board members.

**Mr. J. Cunningham:** That is right.

**Mr. Williams:** And there is no basis in fact that you can point to that this was put on the agenda for that specific purpose?

**Mr. J. Cunningham:** No.

**Mr. M. N. Davison:** Before I return to my questioning of Mr. Cunningham, the Hansard I was referring to was the justice committee, page 1105-1, June 11, 1980. Mr. Drea said, "It was three for three cuts, three for no cuts and one for one cut."

**Hon. Mr. Drea:** That is precisely what he said.

**Mr. M. N. Davison:** He said, "three for four cuts," Mr. Drea.

**Hon. Mr. Drea:** Mr. Davison, there were two—there were meetings there, Mr. Davison. To the best of my knowledge it was, "three for three cuts." At what point what was originally the fourth cut became the third in these informal meetings I do not know, because there was never a decision reached.

**Mr. M. N. Davison:** I don't want to get into another long argument. The minister challenged me to tell him where I read it and I just told him where I read it.

**Hon. Mr. Drea:** I am challenging you again—to apologize—

**Mr. M. N. Davison:** It is quite clear to anybody who can read.

**Hon. Mr. Drea:**—which is a capability you seldom exhibit.

**Mr. M. N. Davison:** Mr. Cunningham, what was the next date of a meeting of the board at which The Tin Drum was discussed after May 7?

**Mr. J. Cunningham:** May 12.

**Mr. M. N. Davison:** Would you tell me what happened at that meeting?

**Mr. J. Cunningham:** This was more or less an informal meeting. Mrs. Brown informed us on the progress of the proceedings on The Tin Drum.

**Mr. M. N. Davison:** Was there another vote conducted at that meeting?

**Mr. J. Cunningham:** No.

**Mr. M. N. Davison:** To the best of your recollection what was the information that Mrs. Brown supplied to you?

**Mr. J. Cunningham:** She was merely keeping us up to date on what was going on. Actually nothing had happened at all. I figured she was just being courteous and letting us know.

**Mr. M. N. Davison:** When was the next meeting of the board at which The Tin Drum was discussed?

**Mr. J. Cunningham:** May 26.

**Mr. M. N. Davison:** May 26?

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** Was there not a meeting on May 15 at which there was a vote on The Tin Drum?

**Mr. J. Cunningham:** No.

**Mr. M. N. Davison:** Was there a meeting on May 14 at which there was a vote on The Tin Drum?



Mr. J. Cunningham: No.

Mr. M. N. Davison: Between May 12 and 26 there was no meeting of the board at which The Tin Drum was discussed. Is that correct?

Mr. J. Cunningham: That is correct. As far as I am concerned, I believe that is correct, yes.

Mr. M. N. Davison: Was there some sort of informal meeting of the board?

Mr. J. Cunningham: I suppose there was of the board, if you want to call a board meeting informal.

Mr. M. N. Davison: Did that occur on May 14?

Mr. J. Cunningham: It occurred on May 15.

Mr. M. N. Davison: May 15. At that vote on The Tin Drum were all the members in a room together?

Mr. J. Cunningham: No.

Mr. M. N. Davison: No? Is it not standard practice at the board to have these votes in a room together?

Mr. J. Cunningham: I do not think so.

Mr. M. N. Davison: I do not think it would be either. Perhaps you would like to explain to the committee how the vote was conducted on May 15.

Mr. J. Cunningham: Miss Enright brought an elimination sheet to me with three cuts on it, which had been initialled by some members of the board. At that time I agreed to initial the three cuts.

Mr. Breithaupt: Why?

Mr. J. Cunningham: I was getting a little fed up with the pressure.

Mr. J. A. Taylor: Could I have a supplementary? Mr. Cunningham, I understood you to have said that if the board followed procedure this film would not have been shown. Is that correct?

Mr. J. Cunningham: Not procedure, precedent.

Mr. J. A. Taylor: Precedent, I am sorry. It would not have been shown. I understood that initially you were not in favour of this film being shown.

Mr. J. Cunningham: No, I prefaced my remarks by saying if we followed precedent, and I think this is in the minutes of the meeting—

Mr. M. N. Davison: It is quite clear, Mr. Cunningham.

Mr. J. Cunningham: —the film should be rejected.

Mr. J. A. Taylor: I see. You thought it should be rejected?

Mr. J. Cunningham: No, I did not think it should be rejected; you must understand this. I said, "because of precedent the film should be rejected."

Mr. J. A. Taylor: Were you in favour of this one cut from the beginning, or no cuts?

Mr. J. Cunningham: I was in favour of allowing the film to go through uncut.

Mr. J. A. Taylor: Uncut?

Mr. J. Cunningham: Yes

Mr. J. A. Taylor: Right from the beginning?

Mr. J. Cunningham: Right from the beginning—even though I voted for four cuts in the initial vote, yes.

Mr. J. A. Taylor: Did you vote for four cuts because you thought you were being pressured?

Mr. J. Cunningham: I felt that was what was expected of me, yes.

Mr. J. A. Taylor: Who would pressure you?

Mr. J. Cunningham: It is quite obvious when you work in an establishment when you incur the displeasure of your superiors by the way you vote. You don't hesitate once you get the message.

The Acting Chairman: Mr. Williams, have you a supplementary to that?

Mr. Williams: Yes. I want to get this last answer clarified. I want to understand what he meant when he said he was subjected to a great deal of pressure. He mentioned that occurred at the May 7 meeting and then again on May 15.

Mr. Cunningham, you said you initialled it because you felt there was just too much pressure and you wanted to be done with the cuts.

Mr. J. Cunningham: Are you talking about the final one?

Mr. Williams: This one on May 15.

Mr. J. Cunningham: Yes.

Mr. Williams: I wanted to simply get at the root of what you meant by "too much pressure." Do you mean too much pressure from the public at large or internal pressure? You mentioned internal pressure and that you did not want to incur the displeasure of other members of the board. What leads you to the conclusion you would perform less effectively if you incurred the displeasure of the members of the board? Have you incurred that displeasure in the



past? If so, how has it been demonstrated? I do not understand that.

**Mr. J. Cunningham:** No, I am not incurring the displeasure of the members of the board. But if you are a member of the board and repeatedly have your decisions or your stand on any decision questioned, you begin to feel that perhaps you are not following the dictates you should be following.

**Mr. Williams:** Questioned by whom?

**Mr. J. Cunningham:** I would say that many of my decisions prior to The Tin Drum had been questioned many times by management and by the censor board.

**Mr. Williams:** Questioned in what sense?

**Mr. J. Cunningham:** If you made a decision on a film and then the director comes and wonders if you have made the right decision or why you allowed such-and-such scene to go, obviously he is displeased.

**Mr. Williams:** You mean, when you are asked for your reasons for making the decision you read displeasure into that?

**Mr. J. Cunningham:** No, I am not asked for my reasons, but whenever I get—

**Mr. Williams:** That is what you just said.

**Mr. J. Cunningham:** I am sorry. I did not mean to say that. I certainly got the impression from Mr. Sims that I was not making the right decisions.

**Mr. Breithaupt:** That you were too lax?

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** What was the attitude of Mr. Sims that led you to conclude you had incurred his displeasure? You keep saying this. What specifically did he do? Is it simply that he questioned it?

**Mr. J. Cunningham:** He would come along and ask why we allowed certain scenes to go through in a film after we had made a decision on it—that this information had been given to him by others.

11:20 p.m.

**Mr. Williams:** Do you feel that as the director he has no right to ask questions of you or an elaboration of decisions?

**Mr. J. Cunningham:** No, I think he has every right to ask questions of me.

**Mr. Williams:** Had you felt this intimidation previously; and, if so, did you ever publicly make it known to the director that you felt pressured whenever he asked you questions about your decisions?

**Mr. J. Cunningham:** Yes. I did not publicly make it known but I and—

**Mr. Williams:** By publicly, I mean to him; rather than harbouring these concerns.

**Mr. J. Cunningham:** Okay. I and other members of the board did make it known to him that we were concerned that after making decisions and initialling decisions he was questioning the decision because of information he was getting from the projectionist in the building.

**Mr. Williams:** Was the projectionist bringing in new information that gave him cause to legitimately ask further questions of the board members? What was the nature of the information?

**Mr. J. Cunningham:** The projectionist would question some scenes within the film and bring them to the attention of Mr. Sims. They were second-guessing the board. It is the function of the board, not the projectionist, to make decisions.

**Mr. J. A. Taylor:** The function of the board is to meet certain community standards as well.

**Mr. Williams:** Has the projectionist ever brought to the attention of a board member a controversial scene that was screened while he was out of the room? Would that be a situation which the projectionist might legitimately raise with the chairman?

**Mr. J. Cunningham:** I think it would be better to raise it with the board member first.

**Mr. Williams:** But is that not a type of situation the projectionist might bring to the attention of the director? In that case would it not be appropriate for the director to bring it to the attention of the board members?

**Mr. J. Cunningham:** Oh, I agree with you. Why not?

**Mr. Williams:** Is that in fact a kind of situation that has occurred?

**Mr. J. Cunningham:** I mean, why has this occurred on so many recent occasions? It didn't occur over the years that I have been with the board.

**Mr. Williams:** Do you mean that board members have been initialling scenes they never saw; is that what you mean?

**Mr. J. Cunningham:** No, I don't mean that at all. I didn't say that.

**The Acting Chairman:** Mr. Williams, I think you are straying a little bit. You will get another opportunity to ask a variety of questions. You are next on the list.

**Mr. Williams:** All right, I will stand down. But that helps.

**Mr. M. N. Davison:** I feel obliged to go a little out of my sequence, Mr. Cunningham, please excuse me. I will come back to the projectionist area later. I would like to get your comments on documents.

Back to May 15. Miss Enright showed you a three-cut elimination sheet. You said it had been initialled by other members of the board, meaning they had seen it, not necessarily that they had agreed to it. Is that correct?

**Mr. J. Cunningham:** I don't know whether they agreed to it or not. There were certain initials on the sheet and I also initialled the sheet.

**Mr. M. N. Davison:** Quite fair. When you initial a sheet at the board does that mean that you have seen it or does that mean that you concur with it?

**Mr. J. Cunningham:** No. I was told that no one would be initialling the sheet if they had not seen the film.

**Mr. M. N. Davison:** When you initialled the sheet on May 15 did that mean you had changed your position and were at that time in favour of three cuts in the movie?

**Mr. J. Cunningham:** I initialled those three cuts, I was not in favour of three cuts.

**Mr. M. N. Davison:** There was no vote by the board after May 7 regarding *The Tin Drum*. Is that correct?

**Mr. J. Cunningham:** That's correct, yes.

**Mr. M. N. Davison:** You said earlier in regard to the May 12 meeting that it was an informal one in which Mrs. Brown brought you up to date on what was happening with *The Tin Drum*. Is that correct?

**Mr. J. Cunningham:** Yes.

**Mr. M. N. Davison:** After that, did you as a member of the board receive continuing updates on what was happening in regard to *The Tin Drum*?

**Mr. J. Cunningham:** No, not that I am aware of.

**Mr. M. N. Davison:** You did not receive a communication to the effect that the attorney for the distributor had offered to have the English cut made?

**Mr. J. Cunningham:** Are you asking me did I get some information?

**Mr. M. N. Davison:** That's right—from the administrative component of the board.

**Mr. J. Cunningham:** No, I did not.

**Mr. Williams:** Could you elaborate—could I have a supplementary? I want a supplementary, Mr. Chairman.

**Mrs. Campbell:** Could I have a question, Mr. Chairman. I am confused—

**The Acting Chairman:** Mr. Williams caught my eye first. A supplementary on that question.

**Mr. Williams:** Could you explain to the committee for the benefit of those who haven't had the pleasure and delight of seeing the movie, what the English cut is. What do you mean by the "English cut"? Could you be explicit about that to the committee so we could have an understanding of this controversial section?

**Mr. J. Cunningham:** Are you speaking to me?

**Mr. Williams:** Yes, I am, Mr. Cunningham.

**Mr. J. Cunningham:** I don't think it is within my province to explain what the English cut is. I am not concerned with the English cut. In the other cut I am just concerned with what we did. The question asked of me was if I was aware of the communication. I was not.

**Mr. Williams:** You may not be concerned—

**The Acting Chairman:** I don't think that is truly supplementary, Mr. Williams.

**Mr. Williams:** I'm sorry, it is; based on the line of questioning that is being pursued here, it is very relevant, Mr. Chairman.

**The Acting Chairman:** It may be relevant but not supplementary.

**Mr. Williams:** Since it is so important to Mr. Davison, I want an elaboration of the testimony. I think the committee is entitled to know what the English cut is. It is very important to the line of questioning we have before us. Can you please give us the explicit details of what the English cut is?

**Mr. J. Cunningham:** I don't know what the English cut is.

**Mr. Williams:** As a member of the board who viewed the film, you don't know what the English cut was.

**Mr. J. Cunningham:** I don't have an official notification of what the English cut is. I wish I knew what it is.

**The Acting Chairman:** Mr. Williams, that is not supplementary to the original question.

**Mr. Williams:** Then I think the question should be withdrawn, if he doesn't know what the English cut is. He can't answer.

**Mr. G. Taylor:** In his reply he described the English cut. That was in Mr. Davison's question and he replied to that.

**The Acting Chairman:** No, he did not. Mrs. Campbell, have you a supplementary?

**Mrs. Campbell:** A point of clarification—

**Mr. Williams:** Mr. Chairman, I am sorry, a question was asked with regard to the English cut.

**The Acting Chairman:** He gave an answer.

**Mr. Williams:** Mr. Cunningham gave a specific answer and I want an elaboration on the English cut. Now he says he doesn't know what the English cut was. Either he knows what it is or he doesn't know what it is. If he doesn't know what it is, he shouldn't have answered the question.

**The Acting Chairman:** You are next on the list, Mr. Williams, after Mr. Davison.

**Mr. Williams:** I know I am on the list.

**The Acting Chairman:** If you want to pursue it at that time, please do. I am recognizing Mrs. Campbell for a supplementary at this time.

**Mr. Williams:** Mr. Chairman, I think the committee is entitled to have this question and answer clarified. It is important that this is clarified for the members of the committee.

**The Acting Chairman:** Mrs. Campbell has the floor.

**Mrs. Campbell:** Mr. Chairman, I wonder if we could resolve this problem. Mr. Davison mentioned the English cut. At our last meeting, there was a discussion of the English cut. My understanding was, and this is what I want clarified, that the minister stated the English cut was not the one cut we were talking about. Am I correct?

**Hon. Mr. Drea:** That is correct.

**Mrs. Campbell:** The one cut is something different. Is that correct?

**Hon. Mr. Drea:** You might ask Mr. Cunningham if that is correct.

**Mr. J. A. Taylor:** He doesn't know what the English cut is.

**Mrs. Campbell:** Just a minute; do you know whether there was an English cut?

**Mr. J. Cunningham:** I found out later. I think the question originally asked was did I get the information that the solicitor for the distributor had offered to make the English cut. I said, "No." I didn't get this information.

**Mr. M. N. Davison:** And earlier Mr. Cunningham's answer as to what the one cut was, was that it was the scene in which the boy was watching the couple.

**Mrs. Campbell:** You know, I haven't seen the thing. I don't know what you are talking about. But that was the English cut.

**Mr. M. N. Davison:** No. That is not, to the best of my knowledge, the English cut.

**Mrs. Campbell:** But your question was about the English cut.

**Mr. M. N. Davison:** But more specifically about the letter. Mr. Cunningham, did you receive any notification before the three-cut elimination sheet was presented to you on May 15, that the solicitor for the distributor had, on May 13, written a letter to Mr. Sims saying in the second to last paragraph: "I am instructed to advise you that unless the issues are resolved, I am to withdraw the film from your consideration at 12 noon, Wednesday, May 14"? Did you receive any notice of that before you initialled the sheet on May 15?

**Mr. J. Cunningham:** The first I knew about it was what I read in the newspapers.

**Mr. M. N. Davison:** Which is some long time after May 14.

11:30 a.m.

**Mr. J. Cunningham:** I subsequently received a letter from Mr. Golden on May 22 with a copy of the letter sent to Mr. Sims on May 21.

**Mr. M. N. Davison:** Okay. So before you initialled the sheet, you were made aware, by the administrative component of the board, neither of the withdrawal of the film nor of the offers regarding the English cut, is that correct?

**Mr. J. Cunningham:** That is correct.

**Mr. M. N. Davison:** I would like to thank you for answering my questions regarding The Tin Drum specifically. I have a couple of questions more general in nature. One involves the question of the projectionists.

Under whatever system is operating at the board, and it is certainly not one that is set out by statute, the projectionists have been reporting to the administrative component of the board or to the board.

**Mr. J. Cunningham:** They were reporting to the administrative component and they raised objections about this. We had a meeting and we agreed it should come to the members of the board before going to administration. On the rare occasions after that, even after going to the board members and being assured by the board members they had seen a particular scene in a film and they had authorized it, the information was given to the administration that the particular scene existed in the film and there were subsequent questions as to why it was allowed to appear.

**Mr. M. N. Davison:** I take it when you say, "even after," that is some time after December 5. I have a copy of a document



entitled, "The Meeting of the Board December 5, 1979 at 3 p.m." The last paragraph has the following sentence: "Members expressed concern about incidents in which projectionists have circumvented the board and reported to the main office occasional explicit scenes that they felt had been overlooked during the screening. They prefer that the projectionists speak to the board first, they being the members who raised it."

I take it that resulted in the memo of December 12 from Mr. Sims in which he states, "In order to prevent possible precedent-setting oversights, projectionists are requested to draw to the attention of the board any scenes which in light of the current guidelines appear to have been overlooked." He then adds, "It is hoped that this will be done in a spirit of mutual understanding, co-operation and common concern for consistency in service to the community."

I understand your answers to mean that after that date there were still occasions on which the projectionists bypassed the board and went directly to the administrative component of the board.

Mr. J. Cunningham: Yes.

Mr. G. Taylor: You suggested earlier that the board meets at different times and in different groupings, is that not correct?

Mr. J. Cunningham: No, I did not say that. Maybe some cannot be present.

Mr. G. Taylor: Then you view films in different numbers—sometimes two people, sometimes three people, sometimes four people; but when you get to a controversial matter, sometimes five people.

Mr. J. Cunningham: If it is very controversial seven members, including the chairman and the vice-chairman.

Mr. G. Taylor: What you are going to call the full board.

Mr. J. Cunningham: Yes.

Mr. G. Taylor: Similarly, this board, as you call it, and the theatres branch are constituted of the same people; the same people constitute the censor board as does the theatre branch?

Mr. J. Cunningham: We on the censor board are members of the theatres branch, but we are not involved in all the workings of the theatres branch.

Mr. G. Taylor: You mentioned one thing earlier about this projectionist. You said by precedent this particular film we are talking about should have been banned.

Mr. J. Cunningham: Yes.

Mr. G. Taylor: And similarly that the projectionist would have as great a knowledge of the films that are going through and the type of decisions that have been ongoing as any one of the board members.

Mr. J. Cunningham: This is possible, but I was appointed to the board to do a specific job. The projectionist was not.

Mr. G. Taylor: Right. To bring community standards to those decisions, that is what the board members are for, are they not?

Mr. J. Cunningham: Yes, I agree.

Mr. G. Taylor: But similarly, having made all these decisions, that projectionist might have those same community standards. He has watched you develop them over the years so he is going to have them. Now having got to that point, knowing the standard that the board is coming to, would not that person, seeing those standards waver a little bit, report to somebody?

Mr. J. Cunningham: If you are going to that extent why not invite members of the public in to view it and circumvent the board altogether? My purpose there is to make a decision.

Mr. G. Taylor: But if the person felt, watching all these scenes, he would have to report to somebody when he sees something he thinks is in error.

Mr. Warner: The memo says, "to the board."

Mr. E. Taylor: "To the board"; that is a subsequent memo that says "to the board."

Mr. J. Cunningham: Yes.

Mr. G. Taylor: So prior to that time it was only ordinary that he would report to some executive person on that board.

Mr. J. Cunningham: I fail to follow your argument. I do not see this as his function.

Mr. G. Taylor: If he is seeing an obvious error, which you say is an obvious error—

Mr. J. Cunningham: No, I did not say an obvious error. You are using the term "obvious error."

Mr. G. Taylor: He is setting standards; you agreed that he would become knowledgeable in your standards; he is then seeing the standards are not there so he reports that to somebody. It does not seem unusual to me that he would report to the executive person of that board rather than trying to seek out seven board members to report to.

Mr. J. Cunningham: Why not? After all, if the board sits and views a film and makes a decision, and the projectionist—and I do not want to get hung up on this projectionist part



—is there he sees the film in total. If he has some concern about that film, why should he not go to the board members to report his concern? Once he has done that, it is up to the board members to make a decision. That is why I was appointed, to make a decision. It should not, then, go further and say that I or any other member of the board, unless it is serious—to insinuate that I am not doing my job properly.

**Mr. G. Taylor:** Is there not a usual chain of command, if the projectionist is an employee? Would it not be natural that he would go to the executive person of the board rather than a board member?

**Mr. J. Cunningham:** No.

**Mr. G. Taylor:** You want him then, if he sees an error, to call a meeting of seven board members so that he can report he thinks there is a flaw?

**Mr. J. Cunningham:** That is not his function. I am a censor board member, this is my function. His function is to project films, not to make a decision.

**Mr. G. Taylor:** What you want him to do then is to go back to you in case there is an error so that you will not get in trouble with the rest of the board members. Is that what you are asking him to do? That is the way I see your chain of reasoning.

**Mr. J. Cunningham:** No.

**Mr. M. N. Davison:** See what we have to put up with in the House all the time, Mr. Cunningham.

**Mr. Acting Chairman:** Mr. McCaffrey, you have a short supplementary relative to the issue of the memo?

**Mr. McCaffrey:** Mr. Chairman, it is a short supplementary for clarification. When regular folk—and I include myself—go to the movies we eat popcorn and occasionally go to the washroom. I do not know whether you people eat popcorn, but is it not possible that occasionally—movies are getting longer these days—people might just slip out to the washroom. I do not want to get into the merits of this projectionist and his sensitivity to the community standards, but it seems to me not an unreasonable back up that the projectionist might say, "Gosh, you were out for a double dip ice cream cone and look what just went through." Has that ever happened, has he ever drawn to your attention—

**Mr. J. Cunningham:** How would the projectionist know if someone was out of the room? The projectionist is in a projection booth behind the screening room; he is not

in the screening room. If I did leave for a double dip, when I came back I am sure my associates would say: "My God, look what happened when you were out. You weren't here for it."

**Mr. M. N. Davison:** Mr. Cunningham, I would like to take you back again to the meeting of December 5. Do you recall at that meeting you discussed two films that exceptions were made to? To one film an exception was made because it was for educational purposes and not to be released commercially; and the other film, as I recall, was for a private film society. They were characterized as exceptions.

11:40 a.m.

The minutes from that meeting include the following sentences: "Mrs. Sexton asked why the board was not informed about exceptions. She suggested that it would like to be involved in these decisions. Mr. Sims replied, 'Since Mr. Drea's speech in the House, we know what our guidelines are. Exceptions should be forgotten'."

The guidelines of the Ontario Board of Censors, I take it, and the only guidelines of the board, are those set forth in the memo from Mr. Sims dated January 16, 1980.

**Mr. J. Cunningham:** That is the first communication on guidelines from Mr. Sims on paper, yes.

**Mr. M. N. Davison:** Were there subsequent communications from Mr. Sims regarding guidelines?

**Mr. J. Cunningham:** Not that I recall.

**Mr. M. N. Davison:** Prior to January 16 were there written guidelines in the hands of the members of the board?

**Mr. J. Cunningham:** Not in the hands of the board members, no.

**Mr. M. N. Davison:** Thank you. Was there a procedures manual in the hands of members of the board?

**Mr. J. Cunningham:** No.

**Mr. M. N. Davison:** There were no written guidelines and there was no written procedures manual, at least in the hands of members of the board.

**Mr. J. Cunningham:** No.

**Mr. Breithaupt:** This board has operated since 1911 with no procedures manual.

**Mr. J. Cunningham:** So far as I know, yes. The board changes. It did have a procedures manual in 1921 and 1922 and it did set out guidelines or rules of operation for the board, but this was discontinued.

**Mr. M. N. Davison:** Mr. Cunningham, now that there are some guidelines or seem to be some guidelines in writing, how do you, as a member of the board, feel the guidelines should be applied? Should they be applied rigidly and literally? Tell me how you think they should be applied.

**Mr. J. Cunningham:** I do not think they should be applied rigidly.

Unfortunately, these guidelines are a tremendous embarrassment to me because I recently drafted some guidelines for Mr. Sims, prior to the LaMarsh commission. Mr. Sims asked me if I would do it for him so he would know what was going on, along with the board, and I did at the time, out of some courtesy and consideration for the gentleman.

I have here the page on which I drew up the guidelines for general, adult entertainment and restricted categories. Then I went on to the other specific items mentioned by Mr. Sims. I also state: "Each film has to be examined as an entity and a scene or situation which might create concern in one production could present a completely innocent picture in another, or vice versa."

**Mr. M. N. Davison:** Thank you.

**Hon. Mr. Drea:** Mr. Cunningham, for the edification of the committee, since you brought this up, we happen to have that proposal—I think that would be the fairest term—that you drew up.

**Mr. J. Cunningham:** For Mr. Sims? Yes.

**Hon. Mr. Drea:** I think the committee would find page three very interesting, particularly the part about questionable material. Perhaps you would read page three.

**Mr. J. Cunningham:** I am making reference to my original notes, not the typed notes for Mr. Sims.

**Hon. Mr. Drea:** Is this not your document?

**Mr. J. Cunningham:** Not completely, no. Here are my original notes.

**Hon. Mr. Drea:** I think we should get this straight then, because we want to make this available to the committee. I thought this was your document.

**Mr. M. N. Davison:** Mr. Cunningham was very clear about that, Mr. Minister.

**Mr. Breithaupt:** This is Mr. Sims's memo of January 16.

**Hon. Mr. Drea:** No, he went further back, some time prior to that. At Mr. Sims's suggestion, Mr. Cunningham had worked on a set of procedures or guidelines. I called it a proposal because he said it never formally came to a vote or anything like that.

**Mr. J. Cunningham:** Excuse me, I am getting a little confused here. You make reference to page three. Page three of which document? What is the date on that?

**Hon. Mr. Drea:** There is no date on it. Is this your document? That is what I am asking. If it is, I want to table it with the committee.

**Mr. J. Cunningham:** No, this is not my document.

**Hon. Mr. Drea:** How does it differ? Is it completely different?

**Mr. J. Cunningham:** It is not the same.

**Hon. Mr. Drea:** How does it differ then?

**Mr. M. N. Davison:** You have an answer from the witness, Mr. Minister.

**Hon. Mr. Drea:** Yes, but I asked him, if it is not the document, if it is not complete. I want to hand it out to the committee. I do not want to mislead you.

**Mr. J. Cunningham:** For the general category, my wording is different. "If, in the opinion of the board, the material in the film is acceptable to all ages, then without doubt such a film would be unclassified."

**Hon. Mr. Drea:** I am talking about page three. Is that different from what you proposed?

**Mr. J. Cunningham:** I don't have a printed page three.

**Hon. Mr. Drea:** I'm talking about the topics on it, whatever page it is.

**Mr. J. Cunningham:** I have nothing.

**Hon. Mr. Drea:** You never did anything on questionable material? There are four topics under that heading and there are about eight or nine or 10 underneath that which say, "We do not allow . . ." I think there is a question mark on a couple of them.

**Mr. J. Cunningham:** I have a list here for adult entertainment which does not seem to be included in this. I will go down the list: "Total nudity without sexual involvement; most nude shots other than genitalia; prolonged fights and brawls; kicks to the body and specifically to genitals; scenes of gore and vicious ill treatment; torture scenes; extreme blood-letting; sadism; masochism; explicit love scenes; agitated embraces; suggestion of copulation; passionate bed scenes; emphasis on erogenous zones; erotic scenes, homosexuality; abundant use of four letter words."

That, without a doubt, would restrict the film, regardless of anything else we did.

Mr. Breithaupt: Perhaps the minister could table the memorandum of guidelines from Mr. Sims of January 16.

Hon. Mr. Drea: Yes, we will do that, but this is one part of it.

Mr. Breithaupt: Yes, but I was just wondering if we could have it.

Hon. Mr. Drea: Sure.

Mr. Breithaupt: Then we would have the information.

Mr. M. N. Davison: I would like to continue with my questions.

Hon. Mr. Drea: Is that document correct or not?

Mr. J. Cunningham: It is not the same as my document, no.

Hon. Mr. Drea: Were the items about questionable matters—there are four of them—in your document or not?

Mr. J. Cunningham: "Defecation, urination, vomituration, religious parodies, denigration of racial groups."

Hon. Mr. Drea: Those were in your document.

Mr. J. Cunningham: I have more.

Hon. Mr. Drea: You have more, okay. Then what about the other ones at the bottom? Are they the same as yours? Do you want to read them?

Mr. J. Cunningham: They are the same.

Hon. Mr. Drea: Why could you not say that?

Mr. J. Cunningham: Just a moment. You are putting me on the spot. You were making reference to a page three which I did not have.

Hon. Mr. Drea: That is why I came back to you and asked you to read it. Is this the document? Can I table it with the committee?

Mr. J. Cunningham: You are just trying to put me on the spot. I prefaced my remarks by saying I drew this up as a help for Mr. Sims.

Hon. Mr. Drea: Mr. Cunningham, if you feel you do not want this revealed to the committee, fine, I will not table it.

Mr. Bradley: He did not say that.

Mr. M. N. Davison: Mr. Minister, are you going to take your football and go home now?

The Acting Chairman: Order. Order, please.

Hon. Mr. Drea: Mr. Chairman, it is tabled with the committee. He did not want it read; that is what his problem is.

Mr. Williams: Mr. Chairman, a point of order.

The Acting Chairman: What is your point of order?

Mr. Williams: We have been here since 10 o'clock this morning and one member of this committee has monopolized the questioning of one witness for an hour and a half. There are 13 other members of this committee who want an opportunity to ask questions, not only of Mr. Cunningham but of the other members of the Ontario Board of Censors. You had better start allotting the time fairly, Mr. Chairman. This committee is becoming more and more of a farce.

The Acting Chairman: There were no time limits set by the committee with regard to any person questioning. I would point out, secondly, that there have been numerous supplementaries which have taken up time. Thirdly, I understood Mr. Davison to say he has only two further questions.

Mr. M. N. Davison: I will not ask my other questions. I will conclude now. I just want to thank Mr. Cunningham for his testimony before the committee. I, for one, appreciated it very much and found it quite interesting.

The Acting Chairman: Mr. Williams, you have the floor.

Mr. Williams: Mr. Cunningham, let us go back to the beginning of the questioning this morning. It seems we quickly moved away from the general area of the procedures of the film censor board, which the committee is here to find out about, to the specifics of meetings held about a specific film being reviewed by the board.

11:50 a.m.

You introduced throughout your testimony some snippets about procedures and standards and so forth. You started to read some that you had prepared for the benefit of the chairman of the board. I would like to go at this in a little more systematic fashion, if I might, because I think it will be helpful to all the members of the committee.

You mentioned at the outset, dealing with this one specific film, that you and one other member of the board sat down on April 17 to view the film *The Tin Drum*. Following that viewing, a decision was made to have a full viewing of the film by all board members on April 21.

Mr. J. Cunningham: I am sorry, did you say I sat down on April 17 to view this film?

Mr. Williams: I am sorry, I am wrong. You were not involved in that initial showing.

Mr. J. Cunningham: No, I was not.

Mr. Williams: There were two other members of the board. That is right.



**Mr. J. Cunningham:** Three other members of the board.

**Mr. Williams:** But using that as a jumping-off point, if I might, could you give the committee the benefit of how the determination is made to move from a viewing by one or two members of the board to full member participation in viewing films? What is the procedure that is set out? What are the standards applied, either collectively by the board, or, if you cannot answer on behalf of the board, by you as an individual? What are the precise procedures as you know them, and what are the standards you apply in discharging your duties as a member of the Ontario Board of Censors? What are the standards you personally apply?

**Mr. J. Cunningham:** If I viewed a film with two other members, and if it was quite a major film which was going to get a lot of exhibition, and if we did not reach a clear-cut decision on it, if there was some argument among us, which there quite often is—we discuss the film at the end of the viewing. We do not just jump to a conclusion. Quite often we discuss films and then come to a conclusion. I think in that case I would recommend to the other two members, if there were two other members, that we have the full board look at it.

In this particular case, because of the precedent set by *Pretty Baby* and *Luna*, and since there was a young person involved, the people who saw the film thought it advisable that the full board see the film.

**Mr. Williams:** The members of the board who initially view the film make a judgement call as to whether or not a directive should be issued to have all the board members come in and view the film with them?

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** Is there no other means or procedure available for ensuring that a full viewing takes place if the film is felt to be controversial? It is strictly a judgement call on the part of the initial viewers?

**Mr. J. Cunningham:** It is strictly a judgement call of the members, but I should imagine that any member would want to protect himself, as I would. I certainly would want to protect myself by having the other members of the board see a film which was in any way questionable.

**Mr. J. A. Taylor:** Mr. Chairman, a supplementary. I will interrupt my friend. Mr. Cunningham, did you say it is a subjective call by a member of the board? That is what I heard you to say.

**Mr. J. Cunningham:** No, I did not say that.

**Mr. J. A. Taylor:** Did you not use the word "subjective"?

**Mr. J. Cunningham:** I did not say that. No, I did not.

**Mr. J. A. Taylor:** I am sorry. I will have to go back to Hansard.

**Mr. Williams:** I understood your answer was that a decision was made by the two initial viewers of the film—

**Mr. J. Cunningham:** The three initial viewers.

**Mr. Williams:** —by the three initial viewers that if the subject matter of the film was sufficiently controversial and dealt with some of the standards that concern the board it would warrant a full viewing by the board.

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** Is that not, in fact, a subjective opinion arrived at by those three initial viewers?

**Mr. J. Cunningham:** Yes.

**Mr. Williams:** Then it is a subjective decision.

**Mr. J. Cunningham:** We all try to be as objective as possible, but this is impossible. I mean, you are going to introduce some of your own subjectivity.

**Mr. Williams:** I am not arguing with you; I am just trying to clarify it. Those three people make the decision that it warrants the full board's participation.

**Mr. J. Cunningham:** Yes.

**Mr. J. A. Taylor:** Excuse me, Mr. Williams.

What I was trying to ask in conjunction with your question was about the judgement call or the subjectivity involved in making a decision. I understood there was some form of community standard, some criteria that would be a benchmark out there, arrived at surely by some involvement with the general public to determine what the current standards of norms or morals were. And it was the application of your judgement against that test that would lead you to a decision as to whether or not a film should be shown at all, or whether there should be cuts; and if it was to be cut, then what the cuts were to be. Am I correct in that?

**Mr. J. Cunningham:** Yes.

**Mr. J. A. Taylor:** I would have hoped at some stage that standard, those criteria, would come forward. Do you have those?

**Mr. Williams:** I am coming to that.

**Mr. J. A. Taylor:** I am sorry then. I did not want to anticipate you but—



Mr. Williams: You did.

Mr. M. N. Davison: I think you should apologize.

Mr. J. A. Taylor: I will.

Mr. Williams: I compliment my colleague for his awareness.

Mr. Cunningham could you advise the members of the committee, is there a published set of procedures for standards or precedents by which the board members are expected to govern themselves? Is there an official published set of procedures or standards or criteria?

Mr. J. Cunningham: No.

Mr. Williams: There are none whatsoever?

Mr. J. Cunningham: None.

Mr. Williams: Could you tell me then, from precedent, first of all what procedures are followed over and above what you have outlined in the way of moving from a screening with three members present to a full screening? I understand that situation.

What procedures are used in viewing a particular film, not just the controversial one here this morning, but any film? What standards are you applying? What is your procedure used in watching that film? Do you have a score card you keep of your own design on which you mark off what to you is offensive or controversial or acceptable? How do you, as an individual, proceed in screening the films? Is there a rating system?

Mr. J. Cunningham: When I get a film, if I find nothing offensive in that film—and I could be wrong, but say the majority finds nothing offensive in that film—then undoubtedly the film will be classified as general entertainment.

If there is a little bit of nudity, or a little bit of sexuality, or a little bit of violence, some profanity, then in my opinion the film would be labelled adult entertainment, which is merely a recommendation—

Mr. Williams: Sort of like a little bit of pregnancy, is it?

Mr. J. Cunningham: Yes, just a wee bit.

Mr. Williams: Just a little bit. Yes.

Mr. J. Cunningham: In our opinion there might or might not be something offensive in a film labelled adult entertainment, but it is a caution to parents to be guided accordingly.

But if there are innumerable scenes of sexuality, a lot of sexual involvement, a lot of profanity, a lot of violence and God knows what else, then undoubtedly I would vote for that film to be labelled restricted, so no

one under the age of 18 could attend a film so labelled.

Mr. Williams: Earlier this morning in testimony, you portrayed yourself as being, if I might use the term, "odd man out" as you discussed your dealings with the chairman. You felt intimidated because perhaps you were being questioned more often by the chairman as to why you made these decisions; you felt you were not going with the mainstream of the decision-making. That is the way I interpreted your answers correctly or incorrectly.

Mr. J. Cunningham: I do not say I have been questioned more than other members.

12 noon

Mr. Williams: But you said in testimony you felt that because your decisions were not as frequently in line with the others therefore you were being questioned.

Mr. J. Cunningham: No, not as frequently. No, you are misunderstanding. You are inferring not in line with the other board members.

Mr. Williams: That was the interpretation I had from one of the answers.

Mr. J. Cunningham: No, that is not what I said; no.

Mr. Williams: You did not say that?

Mr. J. Cunningham: No.

Mr. Williams: What was it you said, then, when you—

Mr. J. Cunningham: That my decisions were not in line with management decisions.

Mr. Williams: They were not in line with management decisions?

Mr. J. Cunningham: Yes.

Mr. Williams: What is the policy of management then? You said there were no published standards or procedures or criteria of management, by the board—

Mr. J. Cunningham: No, but as I said earlier the—

Mr. Williams: How can you say you were not in line with them?

Mr. J. Cunningham: As I said earlier, if I make a decision and management comes to me more than you on a number of occasions, questioning the way I am voting, then I certainly get the impression that I am not pleasing management.

Mr. Williams: I presume that over the years—you have been there since 1968, is that correct?

Mr. J. Cunningham: Yes.

**Mr. Williams:** Over the years you have shared with your fellow board members your personal views on what standards should be, community standards; or what the standards of the board should be or whatever other guidelines you feel would be appropriate to apply in the process. You have made reference to the fact that you had prepared for the chairman your own set of guidelines at his request, and while Mr. Drea has asked they be tabled, I think it would be helpful to the board if you could take the time, because I think it is important, to give that to us in full. You have a three or four page document there. I would like to hear it so I could have some understanding of the type of standards you, as an individual member of the board, apply in your assessing the films you are asked to screen.

**Mr. Breithaupt:** Mr. Chairman, we have the information before us in written form. There is no need to have it read into the record. We have 10 more minutes.

**Mr. Williams:** I want it on the record, Mr. Chairman.

**Mr. Breithaupt:** It is tabled with the committee and it is on the record.

**Mr. Williams:** As a member of the committee I am asking that the information be introduced into Hansard.

Do you have objections? What is your objection, Mr. Breithaupt?

**Mr. Breithaupt:** You are wasting the time of the committee.

**Mr. Williams:** Wasting the time of the committee?

**Mr. Breithaupt:** It will take 15 minutes to read it; if you want to read it, go ahead.

**Mr. J. A. Taylor:** Mr. Chairman, could we clarify which version this is, first of all?

**Mr. G. Taylor:** King James or the one by Cunningham?

**Mr. Williams:** Mr. Chairman, I have asked that the material that had been prepared by Mr. Cunningham be reported to the board members here, and I would like to hear the material.

**Mr. J. A. Taylor:** Is this the material that was prepared by him?

**Mr. Williams:** Mr. Breithaupt has his own set of rules.

**Mr. J. Cunningham:** Mr. Chairman, what do you want me to do?

**Mr. Williams:** I would like to hear the answer to the question.

**The Acting Chairman:** It is up to you. You have been asked to read this into the record.

**Mr. J. A. Taylor:** Did he author this? That is what I wanted to know.

**Mr. J. Cunningham:** No.

**Mr. J. A. Taylor:** No?

**Mr. Williams:** This is a document, Mr. Cunningham, that you had prepared for Mr. Sims, is that not correct?

**Mr. J. Cunningham:** Not that particular document. I prepared some type of guidelines for Mr. Sims, as I said earlier, prior to the LaMarsh commission, because he was going there. He first of all asked the total board members to give him a submission. We got together and discussed it, and I drafted this first page, listing:

"General: If in the opinion of the board the material in the film is acceptable to all ages and without doubt, such a film would be unclassified.

"Adult entertainment: If the film contains scenes of nudity, violence, sexuality, vulgarity, profanity, et cetera, then according to the agreed view such a film would be classified, recommended as adult entertainment.

"Restricted to age 18 years and over: If the scenes of nudity, violence, sexuality, vulgarity, profanity, et cetera are to a certain extent prolonged and mindful of the continuity of the plot, then such a film, as a rule, is classified as restricted entertainment.

"If the film contains scenes of protracted sexuality, overly graphic scenes of violence, or otherwise abnormal activity which could contravene the provisions of the Criminal Code of Canada, then the board would feel compelled to request elimination of such scenes.

"Each film has to be examined as an entity and the scene or situation which might create concern in one production could present a completely innocent picture in another, or vice versa."

**Mr. Williams:** That is what you had read, in part, earlier?

**Mr. J. Cunningham:** That was what I submitted to Mr. Sims and which Mr. Sims rejected. Then he asked for more specific guidelines. He said he needed them because he needed guidance on it. He wanted some help. I was foolish enough to try to be helpful and it has come back to haunt me. But I made it clear that these were simply things which were not written. It was not a bible to be followed, but they were simply for his guidance. Now he has seen fit to publish these.

**Mr. G. Taylor:** A supplementary: Would some of your definitions in there include child pornography films? You got into some very general categories at the end of your definitions.

**Mr. J. Cunningham:** I don't have anything in here about child pornography.

**Mr. G. Taylor:** What about when you are using the broad classifications of those prohibited under the Criminal Code?

**Mr. J. Cunningham:** I don't think anyone would condone child pornography.

**Mr. G. Taylor:** Somewhere in there you wouldn't pass child pornography films.

**Mr. J. Cunningham:** I wouldn't condone it. I wouldn't pass child pornography, no.

**The Acting Chairman:** Do you have a supplementary?

**Mr. Sweeney:** Two things: At this point, could I know whether there is any date attached to the guideline we have just been given?

**Hon. Mr. Drea:** This was prepared at the time of the LaMarsh commission.

**Mr. Sweeney:** Can someone give me an approximate date to these guidelines?

**Mr. J. Cunningham:** I don't have a date on it. I have it somewhere, but I certainly don't have it here.

**Mr. Sweeney:** Secondly: Is it appropriate, and I realize it is your and the committee's decision, to ask Mr. Cunningham if we could have a copy of what he presented so that we can compare his copy with this copy.

**The Acting Chairman:** He has agreed to that.

**Mr. Sweeney:** I am sorry, Mr. Cunningham, I realize I am repeating myself. Do you have a date on the copy you have?

**Mr. J. Cunningham:** No, I'm sorry, I don't.

**Mr. Sweeney:** Could you give me an approximation of the date?

**Mr. J. Cunningham:** No. I just know it was around the LaMarsh commission time.

**Mr. Sweeney:** I'm sorry, I can't identify that approximate time. Could someone help me? About when was that?

No one knows? Would it be three years ago?

**The Acting Chairman:** About 1977 or 1978.

**Mr. Sweeney:** All right, thank you, Mr. Chairman.

**Mr. Williams:** You said Mr. Sims rejected your proposal. At the same time you also said he asked you to go back to the "drawing board," if I can use that term, to broaden

your set of criteria. Do you consider that request to be an outright rejection, simply because he asked you to broaden the terms of reference of your guidelines or criteria?

**Mr. J. Cunningham:** No; the impression I got from Mr. Sims was that the original draft I gave him wasn't broad enough in case he was obviously going to be questioned at the LaMarsh commission. He wanted something more specific that he might be able to use. But I emphasized when I gave it to him that these were merely guidelines which could be deviated from.

**Mr. Williams:** You mentioned to the committee that particular event in your dealings with Mr. Sims. Had you discussed your set of guidelines with any of the other board members?

**Mr. J. Cunningham:** The first document, as I said earlier, was discussed with the other board members. I was the instrument for drafting up the thoughts of the total board. That is on the first page. This is the one Mr. Sims thought wasn't broad enough; didn't encompass enough material.

**Mr. Williams:** Had the other board members been asked to prepare their own sets of guidelines or criteria, as well, for Mr. Sims?

**Mr. J. Cunningham:** I believe so.

**Mr. Williams:** Did that occur, to your knowledge?

**Mr. J. Cunningham:** I don't believe so. I was the only one to draw up this set of guidelines for him. The first page which I make reference to was a consensus of the board; I drafted it for the board. This is the one which wasn't good enough for him. He then came back and said he wanted something more specific. I don't believe the other members did anything about that. I did, because I felt I wanted to help him.

12:10 p.m.

**Mr. Williams:** Following that situation or event, did you then, at any time, initiate any discussion with your fellow board members to try to develop a collective set of guidelines or criteria?

**Mr. J. Cunningham:** No.

**Mr. Williams:** Are the standards that you personally apply in reviewing films specifically those you outlined to us a few moments ago as your first draft set of guidelines?

**Mr. J. Cunningham:** With the proviso—I keep getting back to it—that each film has to be examined as an entity by itself and keeping in mind the plot of that particular film. You cannot be rigid and say that an incident which occurs in this film must necessarily



apply to this other film. It has to be taken within the context of the film.

**Mr. Williams:** You indicated in your testimony that in the first instance you supported certain cuts in this particular film that has been used this morning as an example, *The Tin Drum*. Am I correct in that? You initially supported three cuts in the film, or one cut.

**Mr. J. Cunningham:** No.

**Mrs. Campbell:** No cuts.

**Mr. Williams:** Throughout you supported no cuts?

**Mr. J. Cunningham:** No. Originally I initialled for four cuts. In the first vote, I initialled for four cuts.

**Mr. Williams:** That's what I understood. I think Mrs. Campbell thought otherwise. She said, "No cuts." Mr. Breithaupt also just said otherwise; they said, "No cuts."

**Hon. Mr. Drea:** Perhaps Mr. Cunningham better explain that one again. I understand what he is talking about and I am sure the members of the Ontario Board of Censors do.

**Mr. Williams:** He'd better, because Mrs. Campbell and Mr. Breithaupt seem to be of different opinions. They keep jumping in here telling us what he said.

**Mrs. Campbell:** He referred to precedents.

**Hon. Mr. Drea:** He is talking about two things: number one is his personal vote, and number two is what he initials. The procedures were outlined before: there is a vote; the majority prevails; then all who participated in the vote, regardless of how they voted, initial the recommendations. When he talks about his vote, he means what he wanted to do as Mr. Cunningham, member of the board. Then, at the time there is a majority decision, he becomes part of the consensus on an absolute decision. They are two different things.

**Mr. J. A. Taylor:** There is no dissenting opinion. There is total concurrence on the majority decision.

**Hon. Mr. Drea:** That's right.

**Mr. Williams:** Am I correct, when you come down to the bottom line in this particular situation, that you had initially supported cuts in the film but at the end of the process you supported no cuts?

**Mr. J. Cunningham:** No. The first time I supported four cuts; on the second vote, no cuts; on the third vote, no cuts; and on the fourth vote, three cuts.

**Mr. Williams:** What was the last comment? How many cuts finally? Three?

**The Acting Chairman:** Mr. Davison, a supplementary.

**Mr. M. N. Davison:** Earlier, Mr. Cunningham, we went through the votes on May 1. When you talk about voting for four cuts, are you talking about some time prior to May 1?

**Mr. J. Cunningham:** On April 23 I signed the elimination sheet for four cuts.

**Mr. M. N. Davison:** On April 23 was there a vote by all the members of the board in the same room, by holding up their hands or however the process works?

**Mr. J. Cunningham:** I don't believe so.

**Mr. M. N. Davison:** When you talk about originally supporting four cuts, what you are talking about is initialling an elimination sheet on April 23.

**Mr. J. Cunningham:** That's right.

**Mr. M. N. Davison:** Which is similar to what you did on May 15 when you initialled an elimination sheet for three cuts.

**Mr. J. Cunningham:** That's right.

**Mr. M. N. Davison:** Thank you. I think that clarifies it.

**The Acting Chairman:** Mr. Sweeney has a supplementary.

**Mr. Sweeney:** Mr. Cunningham, in conjunction with the explanation the minister just gave us, could you explain to me what you mean by the word "supported" when you say, "I supported four cuts" or "I supported three cuts"? I heard what the minister said and I heard this business about initialling, but how do you use the word "supported"? What does it mean when you use it?

**Mr. J. Cunningham:** I don't think I used the term "support." I did agree to the four cuts initially and I did initial the sheet. I also have to get back to my remarks that, according to the precedents set by *Pretty Baby* and *Luna*, the film should have been rejected. Therefore, I felt this was what was called for, that these scenes be eliminated from the film according to precedent.

**Mr. Sweeney:** When you used the word "support," you mean "agree with." Am I paraphrasing you correctly?

**Mr. J. Cunningham:** I agreed with the elimination sheet, yes.

**Hon. Mr. Drea:** Mr. Cunningham, you did use the word "support."

**Mr. J. Cunningham:** I don't recall using it.

**Hon. Mr. Drea:** Well, you did. That's what started the confusion. I know the context in which you said it, but I think what is con-



fusing Mr. Sweeney is this question of two steps.

Mr. Sweeney, perhaps if you ask him, "What does 'agree with' mean, what does 'support' mean," or any other verb in connection with the signing, and then ask him what his deliberations were that led up to the signing, it might end the confusion. I know you are not confused, Mr. Cunningham.

Mr. Sweeney: Mr. Chairman and Mr. Minister, the difficulty I am having is that there is a common definition or understanding of what the word "support" means and what the word "agree" means. I am getting a sense that, with respect to the way in which the Ontario Board of Censors operates, they mean something different.

Hon. Mr. Drea: Those words have to be taken in the context of the procedure the board uses. When they are taken properly in the context of the board procedure, they become understandable. I agree with you: When they are put out in general use it becomes somewhat confusing.

Mr. J. Cunningham: I think you explained it earlier, Mr. Minister. If seven members view a film and three members disagree with the decision, it doesn't matter. If I disagree with the decision I am overruled. I sign the sheet anyway. I agree for it to go through as a majority decision—you know, like a cabinet decision.

Hon. Mr. Drea: As a decision.

Mr. J. Cunningham: I am accepting defeat and I am going along with it.

The Acting Chairman: Mr. McCaffrey has a supplementary.

Mr. McCaffrey: Sir, can you just clarify something without all the specific references to dates and cuts, just help me in a general sense? As I understand it, in April, at your first go-round, you were personally disposed to four cuts.

Mr. J. Cunningham: Yes.

Mr. McCaffrey: Then you felt intimidated some time in early to mid-May and went to no cuts.

Mr. J. Cunningham: No. I went to no cuts prior to any other involvement.

The Acting Chairman: Mr. McCaffrey, I don't think that is a supplementary. The question was the definition of the word "support." Mr. Williams, will you continue?

Mr. Williams: Mr. Cunningham, throughout your testimony you have talked about certain pressures you experience in carrying

out your mandate. You have referred largely to internal pressures.

Do you feel that in your position you are subjected to other pressures besides internal pressures? Do you feel you are subject to pressures of the public attitudes at large; to the intensification of press interest in a particular film, for instance; to the pressures of your own peer group, your own personal acquaintances? Do you find yourself besieged by phone calls from the public at large, being critical of you? What other pressures are you subjected to that you have not alluded to?

Mr. J. Cunningham: I think we must be aware of outside pressures. After all, you cannot sit up there in a cocoon and not be aware of what is going on. You have to react to what is going on in the outside world, as, I am sure, any member of parliament does.

Mr. E. Cunningham: You'd be surprised. There are exceptions at this table.

Mr. J. Cunningham: Certainly we read the newspapers and we listen to radio and television. You begin to get some sort of analysis of what is going on out there.

12:20 p.m.

Mr. Williams: Are you more influenced by the public perception of what is acceptable or not acceptable in a film, or are you more bound by your own personal convictions as to what should be acceptable as community standards?

Mr. J. Cunningham: I am at all times trying to reflect community standards as I perceive them.

Mr. Williams: How do you perceive those community standards? What are the community standards, as you perceive them?

Mr. J. Cunningham: That is a pretty broad question.

Mr. Williams: It is and it is a very difficult one to answer, but could you endeavour to do that for the benefit of the committee?

Mr. M. N. Davison: That's a really impossible question.

Mr. G. Taylor: That's his duty, Mr. Davison. If he cannot define his duty, how can he perform it—which I don't think he's done anyway.

Mr. M. N. Davison: Withdraw that. That's a really cheap shot, Taylor.

Mr. G. Taylor: The same as you've been taking the whole damned committee, Davison. We are wasting this government's time playing with this stuff. There are more important things to do than this crap.

**Mr. M. N. Davison:** You've been playing games. Is this how all of it works?

**The Acting Chairman:** Order, please. Mr. Cunningham has the floor. There has been a question asked. Could we return to that?

**Hon. Mr. Drea:** Mr. Chairman, as long as I am the minister I will not have civil servants under the responsibility of my ministry placed in the situation Mr. Cunningham has been placed in. If anybody wants to take on Mr. Cunningham above and beyond his role as a civil servant, and there are a great deal of limitations—and I am not talking about his oath—on exactly how he can answer, then I want to serve notice on the committee that you are taking on the minister. That goes for any board or commission or any civil servant under my responsibility—and I think Mr. Cunningham knows that. If you want to take on the minister, you are welcome to.

**Mr. M. N. Davison:** Well done, sir.

**Hon. Mr. Drea:** That serves for you, too.

**Mr. Williams:** Could we return to the question and get an answer without interruption, Mr. Chairman? It's a very difficult question.

**The Acting Chairman:** There is a question posed to you, Mr. Cunningham. The manner in which you want to answer that question is up to you.

**Mr. J. Cunningham:** You talk about community standards. In relation to what?

**Mr. Williams:** I am trying to determine your point of view. What are the community standards as you perceive them to be, the standards you try to live up to? You indicate that is foremost in your mind in the work that you carry out, trying to meet and respect community standards.

**Mr. J. Cunningham:** I have to be aware of judicial decisions, what is going on in the courts regarding obscenity—if I dare use the word. I have to be guided by that. I also have to be guided by what I read in the newspapers, by the letters we get from individuals, by the phone calls we get from individuals, by the responses I get from people at the theatres. I do go to the theatre. Apart from watching films at work, I go to enjoy them. I listen to comments there. I feel that in my decisions I am reflecting community standards right now.

**Mr. Williams:** Do you feel morality has any part to play in those community standards?

**Mr. J. Cunningham:** Morality? No, I don't think so.

**Mr. Williams:** You think morality has no part to play in community standards.

**Mr. J. Cunningham:** I don't think I have to be a judge of morality, no.

**Mr. Williams:** I'm not saying you have to be a judge of it. I'm asking if you feel that is an important cornerstone of community standards.

**Mr. J. Cunningham:** Oh, yes. You are taking this beyond my capability, but I am sure that any community standard is based on some acceptance of morality or immorality.

**Mr. Williams:** There is just one last thing, Mr. Chairman, if I might, then I will give the other members an opportunity to question.

I would like to come back to the matter of the projectionists, the apparent involvement of projectionists on occasion to bring to the attention of the chairman, if not the individual board members, a particular scene in a film that they felt had not been given proper attention by board members. I raised that question with you earlier this morning and suggested that it might not be inappropriate if a projectionist was aware of the fact that a board member may have been absent from the room, for whatever purpose, at the time of a particular scene that was obviously controversial. I do not think you denied the fact that that has happened on occasion. I used that as an example, and you said, "Yes, that could occur."

**Mr. McCaffrey** pursued that line of questioning with you and you said: "I do not think it is the role of the projectionist. Besides, I do not think he knows who is in the room and who is not."

As I understand it, from his booth in the theatre the projectionist has a full view of the seating arrangement in the theatre. I presume when you have a maximum of seven people in the room and a minimum of three people it would not be too difficult for a projectionist to determine whether or not there was—

**Mr. J. Cunningham:** If the lights were on, yes.

**Mr. Williams:** Whether the lights are on or not—you are not in total darkness.

**Mr. J. Cunningham:** In the dark sometimes it is difficult for me even to find my seat. I am not being facetious. If the projectionist looks through the porthole when the film is on he cannot see anyone. You cannot see anyone in the seats.

**Mr. Williams:** I find that difficult to accept; however, this is your view on the matter.

Did you not agree earlier that in a situation like that it would not be totally inappropriate for a projectionist to bring it to somebody's attention? You disagreed that it should be brought to the chairman's attention rather

than to the attention of specific individuals, but I think you did concur that in a situation like that there would be justification—

**Mr. J. Cunningham:** I would never object in any situation to a projectionist coming to me to discuss a film and expressing his views about a particular film—did you see this, or did you see that. If it was something I was not aware of I would feel I had slipped up somewhere. At that stage I would discuss it with the other members of the board. I would say: "He has brought this to my attention. I don't know what the heck he is talking about. Do you know what he is talking about?" Then we would come to some decision. If the instance he was talking about was something of which I was fully aware and we had discussed it, I would at that stage have said: "We are aware of that. We have discussed it and this is the decision we have come to."

**Mr. Williams:** But in that very situation you have illustrated, surely the projectionist was not trying to impose his standards on you as a member of the board—how you would vote on the matter—by simply drawing it to your attention, as was suggested earlier.

**Mr. J. Cunningham:** No, I did not say he was.

**Mr. Williams:** He would be usurping the role of the board members if he tried to suggest what should or should not be cut, but by simply drawing attention to—

**Mr. J. Cunningham:** No, I objected if after that stage he were to take it beyond the board, knowing the board's decision. If he were to go beyond that then I raised an objection.

**Mr. Williams:** So in that situation it is not necessarily wrong for the projectionist to involve himself?

**Mr. J. Cunningham:** I would never object to a projectionist bringing anything to my attention about a film.

**Mrs. Campbell:** Let me first put my position in focus. I wanted to find out on what criteria a decision was reached. I realize now that was a somewhat simple question in the circumstances. But I have three groups of people who write to me, telephone me and so on, about the role of the censor board.

One is the group who write to complain about a specific picture. Another is a younger group of people for the most part, I think. In their opinion some of the

restricted movies are less offensive than some of the adult movies. Thirdly, there are the film makers themselves. I happen to have some affiliation, particularly with young film makers—though there is one rather older film maker.

I want to try to give you an example of what I am talking about to see if you can give me some clarity: (a) about what criteria, and (b) about these exceptions that you talked about, on which I am not clear.

12:30 p.m.

The specific question posed—and I must say I have not seen any of these pictures, I want to make that clear; the last one I saw was *Murder on the Calais Coach* or something like that.

**Hon. Mr. Drea:** I don't think that is the last film; we saw one together. You should plug that film.

**Mrs. Campbell:** I am sorry, I meant a public film; not *Wings*, at Ontario Place.

How do you determine that you would disallow, for example, uncut versions of *Luna*, *Pretty Baby* and *The Tin Drum*, and at the same time allow a film concerning mother-son incest—*Le Souffle au Coeur* or *Murmur of the Heart*, I believe—which has been shown in its entirety I take it? How do we get to that being an exception to the rules for these other films? That I do not understand. Is it because it is in French, with English subtitles?

**Mr. J. Cunningham:** No, I do not think so. I saw *Le Souffle au Coeur* quite a few years ago. I was quite in agreement with the decision we made to allow the film to go through. I also am in agreement that the film under discussion go through uncut. There is no dichotomy there. Obviously, this has to be a board decision. Obviously, seven board members do give different decisions on different films.

**Mrs. Campbell:** Yes, but you have talked about exceptions. Would *Le Souffle au Coeur* be an exception; and if so, why? Is it because it is a comedy and the others are not?

**Mr. J. Cunningham:** No, I think the—

**Mrs. Campbell:** I am told it is a comedy.

**Mr. J. Cunningham:** It was to a certain extent. It was a lighthearted approach to incest, if you can have it that way. It is like profanity. If profanity is used within a film, a four-letter word can be used which sometimes would sound very inoffensive, and another time some acceptable English phrase could be used which could be full of venom.



I am talking about a particular phrase that starts with "mother" but which is never completed. In recent years this has been used as a derogatory term when they just say, "your mother." Depending on the inflection, that could be a very upsetting word to listen to.

I think you have to take it in the context of the approach to the film—whether it is a comedy or is taken seriously. I think each film is different. You just cannot say such-and-such film went through with such-and-such scene in it and that therefore the scene must remain in another picture. That is impossible. Each film has to stand on its own merits.

**Mrs. Campbell:** So you would say that the community standard to which you are trying to apply your decisions is that incest is acceptable if it is treated as a comedy sort of thing, but if it is treated seriously that is different?

**Mr. J. Cunningham:** No. It is not whether incest is treated as a comedy or seriously but how it is presented on film that makes it acceptable or not. Incest is a topic we cannot ignore. So if it is in a film I do not think we can ignore the film.

**Mrs. Campbell:** I am afraid I really do not understand the answer. My problem is I have not seen these things and really do not know about the scenes or anything else. But it strikes me that somewhere along the line the public is really interested in knowing how you come to these conclusions.

**Mr. J. Cunningham:** Yes.

**Mrs. Campbell:** At the moment it seems to me that it is rather vague. It bothers me if there is going to be a kind of sliding scale for all of these things. That, I think, is the impression that comes through from those members of the public who are expressing concerns to me.

**Mr. J. Cunningham:** I find it very difficult to answer this question. As a member of the board I view each film as a film, not what has gone before and what is liable to come after it. I have to deal with each film as it comes to me.

**Mrs. Campbell:** But you speak about precedents and whether a film ought to be disallowed in its entirety or subjected to cuts. You do have precedents. You have the precedent plus the community standard.

**Mr. J. Cunningham:** Yes.

**Mrs. Campbell:** The precedent may go back quite a long way, but community standards do change somewhat.

**Mr. J. Cunningham:** Yes.

**Mrs. Campbell:** Which are we really dealing with when we are dealing with a film?

**Mr. J. Cunningham:** I think you have to deal with the present standards of the community at this moment, not with what existed a year ago or 10 years ago.

**Mrs. Campbell:** Would you say that precedents really have very little to do with your decision, except as a kind of a back-drop?

**Mr. J. Cunningham:** I would not say they have very little to do with it. I think they are important. The precedent is important if the decision you make today is going to be judged by the precedent set last week.

**Mr. E. Cunningham:** Mr. Chairman, I would like to ask Mr. Cunningham if anyone other than board personnel and the projectionist views the films?

**Mr. J. Cunningham:** Not that I know of.

**Mr. E. Cunningham:** Does anyone else, other than the board per se comment on the efficacy of any film?

**Mr. J. Cunningham:** I am sorry, I do not follow your question. What do you mean?

**Mr. E. Cunningham:** My question is: Are nonboard members or nonboard personnel—I am talking now strictly about the board itself—involved in viewing films at your board office and in commenting on them one way or another?

**Mr. J. Cunningham:** No, not that I am aware of.

**Mr. E. Cunningham:** I have a copy of Hansard here. I do not blame you if you are not a regular reader of it. This is from May 31, 1976. The speaker is the current minister. It is on page S-1372. The minister says, "Regarding the particular sadistic scene—and I toned it down no end; I am very willing to show my notes, and they are very accurate, to the members of this committee . . ."

On what occasion would someone, whether it is a parliamentary assistant or the minister, be involved in this kind of activity?

**Mr. J. Cunningham:** I do not think I can answer that question. I do not know why a minister would come up, or a parliamentary assistant or anyone else. Obviously they would have been invited up to view a film. In the case of the minister, if the minister wanted to see something, that is his prerogative. You asked me why they would be there. I really would not know.

**Hon. Mr. Drea:** Why don't you ask me?

**Mr. E. Cunningham:** I will ask you.

**Hon. Mr. Drea:** In my time as minister I think I have been up to the board four times,



twice for Christmas parties. I went up because of the exigencies of time and they showed me *The Electric Horseman*, which was a convenience to the minister because it was already going out on display.

I was called up to the board once after they had made a decision on a particular film, because they were concerned and they did not want the decision altered. The particular film had to deal with a religious topic that they considered would start an uproar, as it had in the United States. They showed me the film and showed me the warnings they were putting on it—it was *Monty Python's Life of Brian*—because they assumed there would be an uproar.

On the other occasion, and I do not know whether it—I believe they put a warning on. I do not really recall. It was a film called *Hardcore* that they had already approved, but there was a scene in it involving the principal character—played by George C. Scott—who was a very devout Calvinist. Part of the plot had a prostitute, whom he had to engage in a search for his daughter, making light of some very fundamental doctrines of Calvinism.

12:40 p.m.

The board assumed that a lot of people would write us on that religious topic. The board did not change its decision. A fair number of people did write. I have never disagreed with the board's decision. I thought the board was absolutely right. What else could you expect from somebody you had hired in the exigencies of time? That's it, Mr. Cunningham.

What date was that Hansard?

Mr. E. Cunningham: It is from 1976.

Hon. Mr. Drea: In 1975, as you know, we were changing the Theatres Act. We were bringing in eight millimetre and 16 millimetre and we were looking at video tapes. There were a lot of things. As I say, the act was being changed in 1975 and I think my comments then would have been referring to 1975. There were a number of ministers while the board was going through some of those things.

There was great public pressure on the board to do something about the uncensored operations on Yonge Street. I don't have that Hansard with me, but I presume it refers to some of that. There was a very great public outcry. As you know, the act was changed one night in the House. I believe, Mr. Breithaupt, you spoke on it.

At that time there was a great deal of political—with a small "p"—input into how the act should be changed to meet a need

that hitherto had not been there. But in my time in the ministry, and that is with the exception of 13 months when I was Minister of Correctional Services, I know of no minister who ever intervened or did anything other than answer questions, either for the press or in the House.

Mr. E. Cunningham: My reference was to 1976, and you weren't the minister at the time. Mr. Handleman was. I believe at that time you were the parliamentary assistant. During your tenure as parliamentary assistant, did you go up there on a regular basis?

Hon. Mr. Drea: Only during the time around 1975 when we were changing the act.

Mr. E. Cunningham: On how many occasions would you have gone there?

Hon. Mr. Drea: Numerous occasions, at that time, because it was a whole new game. Eight millimetre film, video tapes, all kinds of things that were previously excluded from the act, and that had not even been looked at, were being considered. There were a great number of procedural things, such as the licensing of projectionists, the licensing of hole-in-the-wall sex theatres, that would obviously come under that legislation.

Subsequent to that, I believe Mr. McMurtry, the Attorney General, was there for some showings because—and I have no direct knowledge of this—at that time Mr. McMurtry was setting up Project P with the Ontario Provincial Police. There were a great many people, including journalists, called up then, but that was not for movies. That was for excerpts, et cetera.

Mr. E. Cunningham: I am concerned about the procedural matter, and I just wonder on what basis you would be involved and how you would justify a comment where you say, regarding one particular scene, "and I toned it down . . ."

Hon. Mr. Drea: Which film is this?

Mr. E. Cunningham: It doesn't say.

Hon. Mr. Drea: Well, this was one of the eight millimetre films, or it may have been one of the others. I don't cut anything.

Mr. E. Cunningham: You go on to say, "I am very willing to show my notes . . ."

Hon. Mr. Drea: Yes, they invited me up and I sat there—I think there were two board members there—and they wanted me to see—

Mr. M. N. Davison: Mr. Minister, does the "T" refer to you? "T"—the parliamentary assistant—"toned it down," regarding that scene?

Hon. Mr. Drea: Yes, sure. It was not a scene; it was a sleazy movie. If I recall that particular one—and I don't recall the board

members I sat with—there wasn't much more of a deviation than half a line in what would be cut out of that when they compared what they would do. They explained to me exactly how they were cutting them and so on and so forth. I brought it back and I reported to the Attorney General of the time. The film was never shown.

**Mr. E. Cunningham:** Thankfully. You go into it in great detail here for over a page and I won't bore you with the details. I can only say that it certainly looks like a sleazy movie. I have no more questions.

**The Acting Chairman:** Mr. McCaffrey, did you have a supplementary?

**Mr. McCaffrey:** Yes. It is just a clarification on the general principle about MPPs or other nonboard members looking at films under review, or more specifically, about sections that have been taken out. This recently came up when a group of high school students met with me in my riding office. They were doing, and maybe still are doing, a project on censorship and pornography. I said that I would endeavor to see if these three or four young fellows and myself could go and see some of these things. Anyway, I found out that it could not happen because of their age.

But I didn't ask the next logical question: What about any MPP, Eric Cunningham or myself, going to see what has actually been cut out? Maybe this should be done.

**Hon. Mr. Drea:** Yes, if you have a strong stomach. I think it should be made very plain that these are not movies; these are, what, Mr. Cunningham, 30, 40, 50 feet of out-cuts spliced together?

**Mr. J. Cunningham:** Yes.

**Hon. Mr. Drea:** It is more or less a presentation. In the past, prior to 1974, I recall that one time a committee went up there, and I believe some members of this assembly were physically upset.

**Mr. McCaffrey:** That answers it.

**Hon. Mr. Drea:** From time to time it has been hinted that various ministers and others go up there to see films they could not see on the street. That is totally untrue. I may—I try to get this film once a year and I do not know if I will still have the opportunity because Mr. Belcher is retired, but I have always promised myself a showing of Gunga Din. They have to go and search for it. Miss Enright is smiling at me. I think she has had to search for it a couple of times. Then something comes up and I cannot go there.

**Mr. Williams:** Is that the uncut version?

**Hon. Mr. Drea:** No. I want to bring back treasures of my boyhood and I cannot.

There is a rule about the board. This is a quasi-judicial tribunal; it is not a movie theatre. If there is a reason why a parliamentary committee or an individual member of this assembly wants to see a particular film, I think that member can apply to the branch director or to somebody up there and they will facilitate him. If the committee at some time or another wants to see—how many are there, Mr. Cunningham, two splicings of out-cuts, or is there only the one?

**Mr. J. Cunningham:** I do not know.

**Hon. Mr. Drea:** They are not necessarily sex. In any event, if you want to do it—

**Mr. E. Cunningham:** No, I have no desire to go at all. I enjoy a little bit of levity, but on a serious point, as I conclude, I want you to know this is a serious problem and it is not a black and white problem. What I find particularly disturbing in the testimony today, which I have to believe, is that yet one more agency or board or commission in the province of Ontario has members of that board who feel intimidated. It has occurred at the Ontario Highway Transport Board and it has occurred on other judicial bodies, and I just want to say to you that I find it disturbing.

**Hon. Mr. Drea:** If they were intimidated, Mr. Cunningham, I too would find it disturbing. I don't think they have been intimidated.

**The Acting Chairman:** Mr. McCaffrey, do you have a supplementary? Make sure it is.

**Mr. McCaffrey:** I will make sure it is.

**The Acting Chairman:** You can be put on the list if it isn't.

**Mr. McCaffrey:** It is a supplementary and it is the last point on this matter of other citizens, MPPs or real people, having an opportunity to meet with the censor board at a time of viewing, or not for a viewing. Is there an opportunity for censor board people, who have a difficult job, to meet with religious groups? Is there an opportunity to do this—with parent groups, with concerned citizens—and to what extent is there dialogue?

It is just outrageous to me that the only time an MPP gets an opportunity to meet these people is in a pretty unusual set of circumstances. Do the people at the board attempt to reach out to the community, well beyond MPPs, and in their search for community standards try to get some exchange of opinions?

To some extent, at least, I think the censor board should not be just a place to clip

sections from films. While that is important, it seems to me it has another much more significant role, to receive advice or suggestions in an attempt to keep in touch with people.

**Hon. Mr. Drea:** Mr. Cunningham is obligated to do this. He will answer.

**Mr. J. Cunningham:** To answer your question and also to establish my own credibility, I would appreciate it if you would read this and then decide whether anyone else should read it.

**The Acting Chairman:** What is that document, for the record?

**Mr. J. Cunningham:** This is a letter from Mr. Silverthorne to me.

**Hon. Mr. Drea:** Do you want to say who Mr. Silverthorne was, for the record?

**Mr. J. Cunningham:** Mr. Silverthorne is the former director of the theatres branch.

**Mr. Williams:** Do you want the letter read into the record?

**Mr. J. Cunningham:** I do not care.

**The Acting Chairman:** I think you should read it in yourself. Would you read that letter into the record?

12:50 p.m.

**Mr. J. Cunningham:** This is, "To whom it may concern:

"Reference, J. A. Cunningham.

"I have known Joe Cunningham for many years. I knew him first as an avid moviegoer who enjoyed talking about the history of the movie industry and about the people who had pioneered what became a great form of entertainment. Joe Cunningham came to work for the theatres branch in 1968 while I was director. He was exceptionally well qualified for the job, not only because of his keen interest in movies, but also because he was well educated, had an extensive business background which helped him to relate very well to the average moviegoer in Ontario.

"Joe Cunningham did a good deal of research for me when I was writing the various reports I was responsible for. He did a good job. Later, when assigned to public relations work by me, he did an excellent job of keeping a low profile for the branch while at the same time enabling community groups to make some input to our organization.

"He talked with schools, colleges and universities, students and teachers, and was invariably very well received. He was also well received by the various trade organizations and newspapers he contacted and seemed to make good friends for the branch wherever he travelled.

"I made Mr. Cunningham responsible for all advertising materials submitted with films. Never once did I have cause to regret the responsibility given to him. He managed to steer a fine line so that the public received the maximum amount of information via the advertising with the minimum offence.

"I have the greatest confidence in the abilities of Joe Cunningham based on my knowledge of his work while I was director of the theatres branch. He possesses great qualities of tact and insight and has a sureness of taste which help keep our board's decisions in line with community standards.

"Unsolicited."

**Mr. Breithaupt:** Mr. Cunningham, I have listened with great interest to the testimony you have brought before us today. In looking at you and the other members of the board, all of whom we will probably not be able to question in a shorter period tomorrow afternoon, I suppose it surprises me that all the films you have seen haven't turned you into a group of rather nasty people. You seem quite pleasant, quite mindful, quite normal and I suppose those questioning censorship, one way or the other, will take that into account.

The one problem I have had and that I have spoken to in the House has been with respect to the matter of the procedures of the board. If, from the polls that have been taken or from whatever the term "community standards" means, there is some desire in Ontario to have a form of overview of films, then that may well be the desire of the society in which we live and that may well be the conclusion the government reaches, rather than dealing with classification or other themes.

But the point I raise is one of dealing with procedures. I have followed quite seriously this entire involvement of The Tin Drum and the operations of the board. I would put this question to you which comes out of an article that was in the Kingston Whig Standard, because it is the theme of the procedures that I would hope each board member would want to consider, and indeed the minister as well.

This is the question raised by Michael Cobden in this article: "Why do we need a censor board which deliberates in private, which provides no criteria for its judgments, no explanations of its censorship and which is accountable to no one?"

The question involves procedures, the theme of appeals, the whole review of responsibilities and an opportunity to question, not in the informal way but in a somewhat



more open structure. How would you answer that question? If you think you are able to. "Why do we need a censor board which deliberates in private, which provides no criteria for its judgements, no explanations of its censorship and which is accountable to no one?"—at least in the view of Mr. Cobden.

**Mr. J. Cunningham:** Are you asking me to answer that?

**Mr. Breithaupt:** Yes. And I would have put the question to each person on the board if I'd had the opportunity, but it is unlikely I will be able to do that, as part of our own education.

**Mr. J. Cunningham:** I have not established the procedures under which the board acts; the fact that these decisions are not made known to the public. I merely followed the order as established prior to my joining the board. There is nothing I can do to change it. Any time I have gone out, I have found this very difficult, specifically when I was speaking about Pretty Baby—and it is on record, on radio tape and on television—when despite the fact that I objected to the Pretty Baby decision—I didn't think it should have been rejected—I defended the board's decision on Pretty Baby but I couldn't reveal my true feelings on Pretty Baby. I think that is on record.

**Mr. Breithaupt:** But you obviously share the view that many people in our society are concerned about a clearer accountability, which doesn't seem, at the moment, to be the framework in which we are operating. Whether you agree with that or not is not the point. I wouldn't presume to ask that. But I am sure you would at least acknowledge that many people are concerned about the difficulties of decisions being reached and the manner in which they are dealt with in public.

**Mr. J. Cunningham:** I think this is a tremendously legitimate concern in any democratic society; that I, as a citizen, understand the process going on in government or government agencies. If I don't know, I am suspicious of what is going on. I would wish, as a taxpayer, to be given more information as to what is going on in the censor board.

**Mr. Williams:** A point of order, Mr. Chairman, if I might. An important problem has been raised by Mr. Breithaupt with regard to the fact that he didn't think time would be left to hear from all the board members. This concerns me greatly. Under the circumstances, I would suggest in the time left to us here I would like to put a motion for the consideration of the committee for tomorrow's hearing.

**The Acting Chairman:** Mr. Williams moves that during the time remaining to the committee, the time be equally allocated at the outset of the meeting to hear and question, as witnesses, the remaining board members. And that the initial questioning of witnesses be rotated among the representatives of the three parties.

**Mr. Williams:** In that way, Mr. Chairman, we will be assured of having an opportunity to hear from all the board members and it will give equal opportunity for members of the committee to question the members of the board.

**Mr. M. N. Davison:** I would agree to the time being equally divided among each of the parties.

**Mr. Williams:** You are not agreeable to hearing from all the board members?

**Mr. M. N. Davison:** No. I am agreeable to that. I am agreeable to the time being equally divided among all of the political parties. I don't understand the "rotating." The normal process in estimates is the official opposition, the third party, the government. I don't see any reason to change that. I think if your motion would say, "divided equally among each of the three political parties," I would support that.

**Mr. Williams:** That may be for making statements, Mr. Davison, but not for questioning witnesses. It seems to me that you have had the advantage of having the initial opportunity to question witnesses throughout. I think it should be more fairly distributed among the members.

**Mr. M. N. Davison:** I did not. The official opposition—

**Mr. Williams:** I put that motion, Mr. Chairman.

**Mr. Breithaupt:** Certainly, I think many of the procedures and background matters have been dealt with to a degree, even though the questioning was somewhat lengthy and involved. It happened to be Mr. Cunningham who was the focal point for those things. I have no objection to the motion as you would place it and I am quite prepared to share up the time in a happier way if that is what members of the committee want.

**Mr. Williams:** I think it is important, having invited all the board members here, that they all be given equal opportunity. Particularly bearing in mind that Mrs. Brown is last on the list; I don't want to have her overlooked because I think she will be one of the most important witnesses from a seniority point of view.



**The Acting Chairman:** Would you read the motion again? I am not sure of the clear intent of it—equal time among each of the remaining five and equal time among the parties.

**Mr. Williams:** “For the time remaining to the committee the time be equally allocated at the outset of the meeting”—and we will only know how much time we have tomorrow when we start—“at the outset of the meeting to hear and question, as witnesses, the remaining board members; and that the initial questioning of witnesses be rotated among representatives of the three parties.”

In this way, the time period would include the questioning, so if we only have an hour and a half it be divided up among the remaining board members and they can speak as long as they want or simply entertain questions.

**The Acting Chairman:** I believe there is a consensus. All in favour please indicate.

Motion agreed to.

**Mr. Sweeney:** Can I assume that I will get the first question next time around?

**The Acting Chairman:** You will be first on the list, correct.

**Hon. Mr. Drea:** Mr. Cunningham, will you give that document to the clerk? You were going to file your notes. Did you give those to the clerk?

**The Acting Chairman:** May I thank the members of the board of censors for attending and I assume that you will be back here tomorrow afternoon after routine proceedings. I declare this meeting adjourned.

The committee adjourned at 1 p.m.

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**From the Ontario Board of Censors:**

Cunningham, J., Member



Government  
Publications  
No. J-20

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# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**  
Thursday, June 19, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, JUNE 19, 1980

The committee met at 4:48 p.m. in committee room No. 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

On vote 1504, public entertainment standards program; item 2, theatres, lotteries and athletics commissioner:

The Acting Chairman (Mr. Swart): I would like first of all to state that Mr. Ed Philip has suddenly taken ill this afternoon and I am therefore substituting for him. I believe that he was taken to the hospital but I know nothing more than that. I thought the committee would want to know that.

I am at a disadvantage in that I don't have my records with me and I don't know who is to be next on with regard to members of the Ontario Board of Censors. Our clerk tells me it is Miss Enright.

I would just remind the committee that a motion passed yesterday provided that there was to be equal time for the five remaining members of the censor board and that the questioning time was to be divided equally among the three parties. That was my interpretation of the motion. Yesterday I had recognized Mr. Sweeney—

Mr. Williams: Just on a matter of clarification, I think the motion that was agreed to yesterday was that equal time would be allowed for hearing and questioning remaining witnesses, so that the questioning time would be incorporated into that time allocation. That being the case, could you indicate to the members of the committee how many minutes we will have for each witness?

The Acting Chairman: It has been suggested, and perhaps it is a reasonable suggestion, that we should allow five or 10 minutes at the end of our session to allow a summary by the critic from each party. We therefore have approximately an hour, which will be about 12 minutes for each of the witnesses. That is going to be short.

Miss Enright will be the next witness. I had recognized Mr. Sweeney yesterday. I ask Mr. Sweeney to start the questioning if he wishes, immediately after the witness is sworn in.

Miss Wendi Enright, sworn.

Mr. Sweeney: Miss Enright, there was considerable discussion yesterday about the lack of guidelines for the board.

Miss Enright: Yes.

Mr. Sweeney: We ended up getting a draft that was proposed by Mr. J. Cunningham, a member of the board, which would appear to be the outline that is now being used by the members of the board.

Miss Enright: Yes.

Mr. Sweeney: Could you please tell me to what extent this guideline that we were given first—I have put the word "final" on the top of mine—compares with the draft that came from Mr. Cunningham originally? By the way, I can find very little difference between them, but let us take a look at this one. To what extent is this guideline accepted by all the members of the board as you understand it?

Miss Enright: I do not know which one you have there. I am sorry, I do not have the same guideline you do.

Mr. Sweeney: Could I see the one you have for a second, please? I think it may apply. The aspect that I wanted to deal with is in all three of them, so perhaps we can deal with it.

There is a list called, "We do not allow." It is in Mr. Cunningham's draft, it is in the draft that I was given yesterday and it is in the draft that you just gave me now. To what extent is that a list that you follow completely, all of the time or sometimes? How accurate is that "we do not allow" as you understand the way in which you are to do your job in making the decisions?

Miss Enright: I was acquainted with it, but I had never seen this set of guidelines until it was presented to me on January 16.

Mr. Sweeney: We tried to determine yesterday approximately when these drafts

were made available. I do not have a date, but I received the impression it was some time in 1977.

**Miss Enright:** They were never given to me at that point. They were presented by Mr. Cunningham to Mr. Sims. I, myself, never received a copy of them until January 16, 1980.

**Mr. Sweeney:** Prior to January, what did you, as one member of the board, have available to you to assist you in determining what was acceptable and what was not?

**Miss Enright:** Nothing.

**Mr. Sweeney:** As of January of this year, when you got this list, did you understand that you were bound by it or that it was simply an advisory to you?

**Miss Enright:** No, I did not think I was bound by it. I felt that I, as a member of the board, had had no input into this and therefore was not bound by it.

**Mr. Sweeney:** I gather this was simply passed on to you as a completed fact. You did not in any way participate in helping to form it.

**Miss Enright:** No, I did not.

**Mr. Sweeney:** Mr. Cunningham indicated to us yesterday that he, at least, was asked to contribute to it.

**Miss Enright:** Mr. Cunningham was asked to contribute to it, I was asked to contribute to it. I refused to do it.

**Mr. Sweeney:** Could you explain why?

**Miss Enright:** Because I think guidelines are a very changeable thing. Because of that, I simply stated a number of years ago that I could not enumerate guidelines.

**Mr. Sweeney:** I noticed in the heading I just described to you the pronoun "we" is used. Who are the "we"?

**Miss Enright:** I do not know.

**Mr. J. Cunningham:** May I answer that? That was mine.

**Mr. Sweeney:** I am just trying to understand the sense in which these guidelines are now, in printed form, made available to the members of the board. You do not consider yourself as part of the "we," Miss Enright?

**Miss Enright:** I was never consulted about these final guidelines.

**Mr. Sweeney:** All right.

**The Acting Chairman:** This might be difficult, I realize, but if we are going to divide the time equally, we must move on to Mr. Davison and then Mr. Williams.

**Mr. M. N. Davison:** I know it is made very difficult today for you by the small amount of time we have. I apologize for the unfortunate circumstances in the House that led to that today.

Did you, after May 1, change your vote on The Tin Drum?

**Miss Enright:** After May 1?

**Mr. M. N. Davison:** Yes.

**Miss Enright:** Yes, I did.

**Mr. M. N. Davison:** Would you like to tell me why?

**Mr. Sterling:** On a point of order: What, really, has this to do with procedure. I thought we were getting into something in substance—

**Mr. M. N. Davison:** If we are going to be interrupted by points of order, we will never—

**Miss Enright:** Am I allowed to answer?

**The Acting Chairman:** Certainly.

**Miss Enright:** Sorry. I felt that some pressure had been put on me and I took a good look at the situation. I felt the prime consideration was the use of the child in the movie and therefore considering all those things, I changed my vote.

**Mr. M. N. Davison:** Miss Enright, were you told anything by members of the board, the administrative members of the board, that played a part in your changing your vote?

**Miss Enright:** No, I was not, not at all.

**Mr. M. N. Davison:** Yesterday you heard that Mr. Cunningham felt pressured and intimidated. You have said today you did feel pressured. Did you feel intimidated?

**Miss Enright:** I did not feel intimidated.

**Hon. Mr. Drea:** Sorry, "I did not"?

**Miss Enright:** I did not feel intimidated.

**Mr. M. N. Davison:** Miss Enright, you took the final elimination sheet around?

**Miss Enright:** Yes.

**Mr. M. N. Davison:** That did not result from a vote of the board, as I understand it?

**Miss Enright:** No, it was not an official vote.

**Mr. M. N. Davison:** But at the time you initialled the sheet, on the fifteenth, you had then agreed to certain cuts?

**Miss Enright:** Yes, that is right.

**Mr. Sweeney:** Excuse me, may I have one supplementary on that?

**The Acting Chairman:** No, you had better not.

**Mr. Sweeney:** It is an important issue, Mr. Chairman.

**The Acting Chairman:** It may come out in the third question. I am afraid in dividing the time we will be in real trouble.

**Mr. M. N. Davison:** On May 1 and May 7 the board voted by a majority for one cut in the film, *The Tin Drum*.

**Miss Enright:** That is right.

**Mr. M. N. Davison:** To the best of your knowledge, is there some reason why no elimination sheet was then initialled?

**Miss Enright:** I do not know why an elimination sheet was not initialled. I did not know why.

**Mr. M. N. Davison:** Would it have been either Mrs. Brown or Mr. Sims who was responsible at the board for an elimination sheet not being sent around and initialled after those two decisions of the board?

**Miss Enright:** I really do not know. I cannot say.

**Mr. M. N. Davison:** Who drafts elimination sheets in such a—

**Miss Enright:** Usually it is the office manager.

**Mr. M. N. Davison:** Who is he?

**Miss Enright:** Her name is Miss Levandusky.

**Mr. M. N. Davison:** It is not drafted by either of the administrative officers of the board?

**Miss Enright:** No. We give our elimination sheets to her. As far as I know, it is she who does make them up.

**Mr. M. N. Davison:** You said you felt pressured. Where did the pressure come from?

**Miss Enright:** I felt pressure in the fact that I was at a meeting in which a rotating board was mentioned.

**Mr. M. N. Davison:** Because of that you felt pressured, but you do not want to use the word "intimidation."

**Miss Enright:** Oh, no. I do not think that was intimidation.

**The Acting Chairman:** We have to move on to Mr. Williams now.

**Mr. Williams:** Miss Enright, you were talking at the outset about guidelines and that you refused to use guidelines. What procedures or practices do you use to rate films if you refuse to use any guidelines?

5 p.m.

**Miss Enright:** Perhaps I should explain. I am saying I refuse to use guidelines in that I had no participation in the drawing up of these guidelines.

**Mr. Williams:** It is my understanding from Mr. Cunningham's testimony yesterday that there is no printed set of guidelines and it never came to fruition as far as any formalization of guidelines is concerned? Is that correct?

**Miss Enright:** All I can say is I was presented with a set of guidelines into which I had no input.

**Mr. Williams:** Were they not formalized as the official guidelines of the board?

**Miss Enright:** I never formalized them. I do not know.

**Mr. Williams:** I want to be clear on that, because Mr. Cunningham said there was no printed set of guidelines in his testimony yesterday.

**Miss Enright:** No, I found them sitting on my desk and I had no input into them.

**Mr. Williams:** You indicated a few moments ago that you changed your vote, and I think you said you changed your vote with regard to the specific film, *The Tin Drum*, for two reasons: First, that you felt somewhat pressured; and secondly, because of the use of the child involved in the film in certain controversial scenes. Which of those took priority in your mind?

**Miss Enright:** In my mind the use of the child took priority.

**Mr. Williams:** Has the use of young children in sex scenes in movies been in your mind throughout as one of the bases on which you would support any removal of a section of film? Would you apply that across the board?

**Miss Enright:** Yes, I would.

**Mr. Williams:** I presume, then, that your original vote was in favour of no cuts?

**Miss Enright:** That is right.

**Mr. Williams:** It was latterly that you decided there should be a cut for the reason you have primarily cited. Is that correct?

**Miss Enright:** Yes, that is correct.

**Mr. Williams:** I come back again, then, to the point that was raised by one of the other members, this matter of pressure. Yesterday, Mr. Cunningham testified that not only was the matter of a rotating board raised on one occasion, but that it was raised with him informally by the chairman on at least two other occasions. Had the matter been raised with you prior to that meeting in an informal discussion with any member of the board, the chairman or otherwise?



**Miss Enright:** No, I had heard there was a possibility of a rotating board but it was never raised with me by the chairman.

**Mr. Williams:** Had there been any discussion amongst the members of the board about the possibility of a rotating board before that particular meeting in May?

**Miss Enright:** No, not that I can recall.

**The Acting Chairman:** Thank you, Miss Enright. We will now move on to Mrs. Rosemary Sexton.

**Mrs. Rosemary Sexton sworn.**

**Mr. Breithaupt:** Mrs. Sexton, as you are no doubt aware at this point, as are most of the members of the audience and the committee, these hearings have virtually nothing to do with the fact of censorship. They have to do with the procedures of the board. You were reported in this morning's *Globe and Mail* as commenting to the press after yesterday's hearings that you concurred with Mr. Cunningham's testimony and that you also felt intimidated. Would you say that is a correct summation of your views and would you expand on them, please?

**Mrs. Sexton:** Yes, it is a correct summation and I have a number of instances of intimidation.

**Mr. Breithaupt:** Would you give them to us, please?

**Mrs. Sexton:** Yes. These are just small points, but added all together I think they add up to quite a bit of intimidation. The first week after I joined the board I was reading a book called *Pro and Con Censorship* and Mr. Sims came up to me and asked what I was doing reading a book that had arguments on censorship, that that should not be part of my reading.

During the first month I was at the board I was given a ride home once by Mary Brown who told me I was not to be influenced by Mr. Cunningham and Mrs. Enright, who were very liberal members of the board.

A few months after I was on the board I discussed in the screening room with other members of the board a Supreme Court of Canada case on *Last Tango in Paris*. I discussed with other members of the board Chief Justice Bora Laskin's dissenting judgement where he felt that censorship was a matter of criminal law and that, therefore, there should not be a provincial censorship board. That was his dissenting judgement and the majority held out. I was brought down to Sims' office and told I was not to discuss such matters in front of the other board members, that I was influencing them.

A few months after that I asked to go to a Vancouver convention on pornography that was run by the British Columbia censorship board, on my own money—my husband was flying out to Vancouver—and mainly on my own time, though I would take Friday off. I was told by Mr. Sims that May-lou McCausland, director of the BC film classification branch, was a very radical person, that he did not want me to hear those views and I was not to go.

Mr. Drea's name was brought up quite often by Mrs. Brown and Mr. Sims. We were told on numerous occasions that in the last couple of months Mr. Drea had apparently been speaking in the House and that, since Mr. Drea's speech in the House, we knew what our guidelines were.

There is the whole matter of the projectionists bypassing the board. When several of us would look at a film and not cut a certain scene which the projectionists would see and think should be cut, they would go down and tell Mrs. Brown and Mr. Sims who would then view it on their own.

I was often told by both Mrs. Brown and Mr. Sims when I first joined the board that Mr. Sims had veto power over any decision the board made. From reading the *Theatres Act*, that is not so.

Last October I was brought down to Mr. Sims' office and accused of going soft. I cannot remember the exact incident and I cannot remember the movie we were seeing, but he obviously had not approved of whatever decision I had made and I was accused of going soft.

On January 15 we were handed these guidelines by Mrs. Brown or Mr. Sims—I think it was Mrs. Brown—and we were told to follow them.

**Mr. Breithaupt:** Did you have any part in their creation?

**Mrs. Sexton:** No. A few days after viewing *The Tin Drum*, Mrs. Brown called a meeting after our first vote on *The Tin Drum* reminding us of these guidelines. I voted for no cuts and so had some other members. Mrs. Brown called the meeting. It was after the first vote. It was April 24. It was after we had screened it and had the first vote. Mrs. Brown called the meeting and reminded us of the guidelines, pointing out specifically that this "we do not allow" list was to be taken rigidly. I argued with her and said, "Above that, it says you must see the movie in context, you must look at the plot." She said: "The paragraph on context is not referred to in the 'we do not allow' list. The 'we



do not allow' list is rigid." Mr. Cunningham supported me at that time.

I found that Mrs. Brown—and perhaps Mr. Sims, I am not sure—were in constant contact with church groups, with the Legion of Decency, with the Catholic Women's League of Canada, and we always got feedback from those meetings, whereas there were never meetings with other segments of the population. Often we would not find out that Mrs. Brown or Mr. Sims had spoken to these groups until we read about it in the paper. We were often not informed about their speaking engagements. Rarely were the rest of us in contact with the public.

When the Kowalski/Loeb Report was on CBC-TV, Mr. Sims asked us to stay in the screening room and then he asked if there were locks on the doors.

5:10 p.m.

For a long time, until we went to the union with our grievance, we only got letters which were screened by Mrs. Brown and Mr. Sims. We were not given all the letters that came in from the public.

Information was constantly kept from us. I read in the paper about two months ago that Mr. Justice Morand, who is now the Ontario Ombudsman, was in contact with the board last summer about Pretty Baby and asked us for our views. Apparently the board responded. I never heard. I never responded. I was never asked to respond.

In the Globe and Mail there was an article on September 22, 1979 that there was an agreement between the board and film festival people, that the board would be careful with their scissors for festival movies. I was never informed of that.

Hon. Mr. Drea: That is incorrect. The article was referred to me.

Mr. M. N. Davison: Let the witness give her testimony without interrupting.

Mrs. Sexton: Okay; well it said the board.

Mr. Breithaupt: That's an interruption that is worthwhile.

Hon. Mr. Drea: I know about that particular article, because everybody who has been concerned with that article, both in the festival and outside, has denied a great deal of the thing. I am prepared to table with the committee the full discussions that took place with Mr. William McMurtry, who is part of the festival, and somebody else in it. At no time was there any mention of the board or anything else taking it easy with scissors.

Mrs. Sexton: Well that is what the Globe and Mail article of September 22 said.

Mr. Breithaupt: You are both correct for different reasons.

The Acting Chairman: According to rules, I must now move on to Mr. Williams. He caught my eye and he may want to change the direction.

Mr. Williams: Are you a full-time member of the board?

Mrs. Sexton: Yes.

Mr. Williams: Are all members full-time?

Mrs. Sexton: Yes.

Mr. Williams: How has your attendance rating been at the meetings of the board?

Mrs. Sexton: My attendance where?

Mr. Williams: At the board.

Mrs. Sexton: At the board generally?

Mr. Williams: Yes.

Mrs. Sexton: After I voted for no cuts in The Tin Drum, I received a letter from Mr. Sims, and Mrs. Brown I am sure, complaining about my attendance because I had been away. I have a family. I have two children and I think I had been away an average of one or two days a month.

Mr. Williams: Have you been absent on a regular basis?

Mrs. Sexton: No.

Mr. Williams: Had you ever been questioned before about attendance or lack of attendance on Fridays and Mondays?

Mrs. Sexton: Yes. Last summer I went to Mrs. Brown and asked her if I could have a leave of absence to go away for a week with my husband. She said she would consider it. She and Mr. Sims called me in the next week with a full detail of my absences and said that, as I had been absent so many times since I had started at the board—and really, to my mind, it wasn't very many times, it was one or two times a month—that no, I could not have a leave of absence. My attendance was first brought up when I asked for the leave of absence.

Mr. Williams: Do you personally believe in censorship?

Mrs. Sexton: I did before I joined the Ontario Board of Censors.

Mr. Williams: If you don't believe in censorship, would it not be consistent with your thinking to resign from the board instead of participating in a censorship process?

Mrs. Sexton: I have thought of resigning from the board because of the procedures that have been going on, but I thought it

was better for me to stay and see what could be done.

**Mr. Williams:** How can you rationalize that when you believe there shouldn't be censorship, yet you are part of that process?

**Mrs. Sexton:** I didn't say that. I said I don't think there should be irresponsible censorship. I think that is what is happening at the board right now.

**Mr. Williams:** Do you have any feelings of morality, whatsoever, with regard to the exploitation of infants for use in explicit sex scenes in films?

**Mrs. Sexton:** I don't think children should be exploited and I don't think that David Bennet, the child actor in *The Tin Drum*, was exploited.

**Mr. Williams:** Have you no concerns about or conscience on that matter at all?

**Mrs. Sexton:** No. None whatsoever. I have two children and I don't think that was child exploitation at all.

**Mr. Williams:** With regard to the evidence yesterday about projectionists drawing to the attention of the board members the fact that they may have missed controversial parts of films, have you ever been involved in any incidents where the projectionists have drawn to your attention that you may have missed controversial scenes from films because of lack of attendance or being out of the room during the showing of the film?

**Mrs. Sexton:** Have I been involved with projectionists drawing it to my attention because I have been out of the room?

**Mr. Williams:** Drawing it to your attention that you may have been out of the room and may not have observed the whole film, so as to miss a controversial scene.

**Mrs. Sexton:** No. Every time a projectionist has complained about a scene, I had seen the scene and had decided to pass it. We had decided to pass it. We had made the decision to pass it.

**Mr. Williams:** So there has been no occasion when you have inadvertently missed a showing.

**Mrs. Sexton:** Not in a major movie. In the porns there are so many sex scenes that sometimes we do inadvertently miss them. Then it is fine for the projectionist to come and tell us we have missed something.

**Mr. Williams:** When *The Tin Drum* issue came up, did you have an opportunity to discuss or were you approached by any mem-

bers of the Legislature to discuss *The Tin Drum* issue prior to the meeting today?

**Mrs. Sexton:** No; never.

**Mr. Williams:** This is the first opportunity you have had to discuss the matter with members of the Legislature.

**Mrs. Sexton:** I have never met any of the members before today or talked to them; never.

**The Acting Chairman:** That will end the questioning of Mrs. Sexton. Unfortunately, the time is up. Thank you very much, Mrs. Sexton.

We now move to Mr. D. Walker. You will be sworn in.

Douglas Walker, sworn.

**Mr. Sweeney:** Mr. Walker, I believe it was on May 15 when the little list was sent around that you were asked to initial for three cuts.

**Mr. D. Walker:** That's right.

**Mr. Sweeney:** Were you aware of the fact, at the time that list you were to initial was circulated, that the producers had already indicated to Mr. Sims that they were prepared to make cuts of one type or another?

**Mr. D. Walker:** No, I wasn't.

**Mr. Sweeney:** Is it the normal operating procedure of the board that members are fully advised of the various conditions offered at the time they are asked to make a decision?

**Mr. D. Walker:** As a rule, yes.

**Mr. Sweeney:** Would you say that in this particular situation—and I will choose my word carefully—the withholding of that information from you was an unusual procedure?

**Mr. D. Walker:** The way I felt and from what I gathered, the letter was to Mr. Sims. He felt it was a personal letter to him; therefore, it wasn't passed on to the board.

**Mr. Sweeney:** As a member of the board being asked to participate in a decision, had you known at that time would you have decided differently?

**Mr. D. Walker:** No. My decision would have been the same.

**Mr. Sweeney:** All right. What about this information we have been given about the projectionist who would appear to be second-guessing the members of the board? Were you aware that this was going on? Do you feel it is an appropriate thing to happen? Again, I am only interested in the procedures.

**Mr. D. Walker:** Yes, I am aware that it goes on. There have been times when the projectionists have saved the board from embarrassment because they have caught an item that

actually should have been eliminated but that the board has missed. That has happened, so I have to give them that credit.

Of course, I feel the projectionist should come to the board first.

**Mr. Sweeney:** You have anticipated my next question. Is there any mechanism in place whereby someone like the projectionist can come to you, to the members of the board, as opposed to going to the chairman or the vice-chairman?

**Mr. D. Walker:** The projectionists can come to us.

**Mr. Sweeney:** But is there, in your operating procedures, a mechanism for that to happen in a standard way, or is it a rather haphazard procedure so that he may come to you or he may go to the chairman or he may go to Lord-knows-who? I am trying to establish the way in which things normally work.

**Mr. D. Walker:** As a rule, he comes to the board first.

**Mr. Breithaupt:** That is to say the panel that has seen that movie.

5:20 p.m.

**Mr. D. Walker:** Yes. Then if there isn't any move made by the board, as a rule the projectionist will go to management.

**Mr. Sweeney:** All right.

Can I ask for your opinion again on this list we talked about earlier? Miss Enright and Mrs. Sexton have very clearly indicated their feelings on it. What is your personal opinion as a member of the board with respect to this "we do not allow" list? Secondly, to what extent did you participate in drawing up that list, if at all?

**Mr. D. Walker:** I didn't have anything to do with drawing up this list.

**Mr. Sweeney:** How do you feel, as a member of the board, that a list such as this is presented to you and that you are asked to follow it? Does it seem reasonable?

**Mr. D. Walker:** It seems a reasonable request.

**Mr. Sweeney:** Prior to getting this list, what did you have available to you as a guideline to help you make decisions?

**Mr. D. Walker:** Actually all we were able to do was go by community standards.

**Mr. Sweeney:** Were you, as an individual member of the board, expected to make that judgement, or was there a discussion among board members as to some joint understanding of what community standards were?

**Mr. D. Walker:** I think we all had our own ideas on community standards.

**Mr. M. N. Davison:** Mr. Walker, on May 12 there was an informal meeting of the board at which there was a discussion of The Tin Drum, and, as Mr. Cunningham testified, Mrs. Brown brought the members of the board up to date, explaining the situation. What did she tell members of the board?

**Mr. D. Walker:** I'm sorry, I cannot remember that.

**Mr. M. N. Davison:** When was the first time you learned that the distributor of The Tin Drum was prepared to offer the English version for exhibition in Ontario as a compromise?

**Mr. D. Walker:** When I received a letter.

**Mr. M. N. Davison:** Do you remember from whom and when?

**Mr. D. Walker:** The date was May 22 and it was from Mr. Golden.

**Mr. M. N. Davison:** I see. Do you not think it is unusual that, as a member of the board, you were not informed of that offer?

**Mr. D. Walker:** Did I think it was unusual? Well, as I explained earlier, I understood that it was a personal letter to Mr. Sims.

**Mr. M. N. Davison:** Therefore, you do not think it is unusual. Anything addressed to the chairman is then a personal letter?

**Mr. D. Walker:** If it is a personal letter.

**Mr. M. N. Davison:** I have a copy of the letter and it doesn't say "personal" on it, Mr. Walker. Do you contend that anything addressed to the chairman of the board is a personal letter to him?

**Mr. D. Walker:** I beg your pardon?

**Mr. M. N. Davison:** Would you say that the normal procedure of the board is that any letter addressed to the chairman, whether it has "personal" stamped on it or not, is a personal letter to the chairman of the board? Is that the normal procedure?

**Mr. D. Walker:** If it's personal, I would say so.

**Mr. M. N. Davison:** How do you know if a letter is personal?

**Mr. D. Walker:** If it is marked "personal."

**Mr. M. N. Davison:** Is this letter marked "personal" on the copy that you have?

**Mr. D. Walker:** No, on the copy that I have it isn't marked.

**Mr. M. N. Davison:** Did you see the copy Mr. Sims received?

**Mr. D. Walker:** No, I didn't.

**Mr. M. N. Davison:** We can assume it was the same letter. I ask you, then, why you contend that it was a personal letter?



**Mr. D. Walker:** It's difficult for me to answer because I really—

**Mr. M. N. Davison:** Do you feel that a substantial amount of correspondence is withheld from the members of the board, other than the administrative members, by the administrative members?

**Mr. D. Walker:** At this moment, no, and for the past few months I feel we have been getting all the letters.

**Mr. M. N. Davison:** Have you ever submitted a grievance through your union?

**Mr. D. Walker:** No, I haven't.

**Mr. M. N. Davison:** Do you feel members of the board should be encouraged to appear before groups to speak publicly?

**Mr. D. Walker:** Yes, I do.

**Mr. M. N. Davison:** Have you done much of that?

**Mr. D. Walker:** I haven't done a lot of it, but I've done some.

**Mr. M. N. Davison:** Why do you think you haven't done a lot of it?

**Mr. D. Walker:** Well, I just haven't been asked to do a lot of it.

**Mr. M. N. Davison:** Is it true that Mrs. Brown and Mr. Sims take the vast majority of speaking engagements on behalf of the board?

**Mr. D. Walker:** They have taken a great deal of them.

**Mr. M. N. Davison:** These requests for speaking engagements, I take it, can also be characterized as personal requests of Mr. Sims.

**Mr. D. Walker:** Yes.

**Mr. M. N. Davison:** I have no further questions.

**Mr. Williams:** Did you have any discussions, prior to the May 7 meeting, with regard to the matter of rotation, the possibility of going to a rotating basis?

**Mr. D. Walker:** I have never had any official discussions, but I was aware of a rotating board.

**Mr. Williams:** From what source?

**Mr. D. Walker:** From talk around the theatres branch.

**Mr. Williams:** Did you feel concerned about it or intimidated by it? Did you feel intimidated the day it came up at the May 7 meeting?

**Mr. D. Walker:** I actually did not that day, no. It was not really news to me and I did not feel intimidated.

**Mr. Williams:** Prior to today's meeting, have you ever been approached by any member of the Legislature to discuss the controversial film *The Tin Drum* or by any political party to discuss the matter?

**Mr. D. Walker:** No, I have not.

**Mr. Williams:** Has there been any occasion in the past where you have been approached by film producers or distributors to encourage the board to take objection to a film for the sheer purpose of gaining publicity for that film, riding on the board as a vehicle for creating undue and unwarranted publicity?

**Mr. D. Walker:** No.

**Mr. Williams:** Have you at any time felt that the projectionists, who were talked about earlier in your questioning, were inappropriately injecting themselves into the board's responsibilities by drawing attention to the fact there may have been missed scenes by inattentive members of the board?

**Mr. D. Walker:** I believe this has happened a couple of times.

**Mr. Williams:** Have you taken objection to the projectionists drawing this matter to the attention of the board?

**Mr. D. Walker:** I feel the projectionists should come to the board.

**Mr. Williams:** Yes. You made that clear in your evidence.

**Mr. D. Walker:** Yes.

**Mr. Williams:** But do you feel that—

**Mr. Breithaupt:** By that, do you mean the panel which viewed the film?

**Mr. D. Walker:** That is right.

**Mr. Williams:** I understand you prefer that procedure be followed, but what I am asking you, Mr. Walker, is whether you felt, under those given circumstances you are reflecting upon, that the projectionist acted inappropriately or appropriately under the circumstances?

**Mr. D. Walker:** I feel it is inappropriate if he goes—

**Mr. Williams:** Inappropriate?

**Mr. D. Walker:** Yes.

**Mr. Williams:** Unless he goes to the board.

**Mr. D. Walker:** Unless he goes to the board.

**Mr. Williams:** It might be appropriate under given circumstances, provided he uses that procedure. Is that correct?

**Mr. D. Walker:** Yes, provided he comes to the panel.



**Mr. Williams:** I am sorry, I missed how long you have been a member of the board, Mr. Walker.

**Mr. D. Walker:** Nine years.

**Mr. Williams:** Do you believe in censorship?

**Mr. D. Walker:** Of course, or I would not be there.

**Mr. Williams:** Do you feel that in good conscience you could be a member of the board if you did not believe in censorship?

**Mr. D. Walker:** I could not be a member of the board unless I really believed in censorship.

Mr. James Walker, sworn.

**Mr. Breithaupt:** Mr. Walker, I understand that you are a former film maker and were the media services co-ordinator for the Ministry of Correctional Services. What were your tasks with respect to media co-ordinating at that ministry?

**Mr. J. Walker:** I was not the co-ordinator for the ministry. I was the only one in the ministry at the time and I worked at a correctional institution at which I co-ordinated the media program for that institution. I was at the time a consultant to the entire ministry, because at that time I was the only one with that expertise in the ministry. I also did promotional and staff training in development work for that ministry.

5:30 p.m.

**Mr. Breithaupt:** You were appointed to the board on November 26, 1979. Did you have any involvement with the preparation of the guidelines that came out on January 16, 1980?

**Mr. J. Walker:** No, sir, I did not.

**Mr. Breithaupt:** Were you aware in your time at the board, which has not been lengthy, of the memorandum dated December 12 concerning the matter of the overview by projectionists of the work of a panel that would initially see a film?

**Mr. J. Walker:** I was aware of that memo. It was as a result of a discussion at a board meeting we had on, I believe, December 5.

**Mr. Breithaupt:** You were on the first panel or group that saw *The Tin Drum*; is that correct?

**Mr. J. Walker:** Yes, I was.

**Mr. Breithaupt:** As I understand it, you are likely to be the person who voted for the one cut, since we all seem to be showing our attitudes in this matter. Is that correct?

**Mr. J. Walker:** That is correct.

**Mr. Breithaupt:** That was the hotel room scene and not what is referred to as "the English cut." Is that correct?

**Mr. J. Walker:** I do not believe it was the hotel room scene. It is not what is referred to as "the English cut," though. I think it could be described as a parlour scene in which Oskar's father—

**Mr. Breithaupt:** Yes, it is the one with Oskar's father. How did you become appointed to the board?

**Mr. J. Walker:** There was a competition held for a vacancy for a member of the Ontario Board of Censors. I applied and I was a successful applicant in that competition.

**Mr. Breithaupt:** I have no further questions.

**Mr. M. N. Davison:** Mr. Walker, you have heard the testimony of other members of the board in regard to *The Tin Drum* controversy. Did you at any time feel pressured and intimidated?

**Mr. J. Walker:** Yes, I did.

**Mr. M. N. Davison:** Would you explain to me what it was that caused you to feel pressured and intimidated?

**Mr. J. Walker:** Primarily it was the statement which was read to us as the number one point on the agenda of the meeting on May 7. It was a statement from Mr. Crosbie which dealt with the possibility of a rotating board. At that point I very much began to wonder if I would have a job.

**Mr. M. N. Davison:** The statement coming from Mr. Drea's deputy minister was cause for you to feel intimidated.

**Mr. J. Walker:** I felt it was a significant intimidation.

**Mr. M. N. Davison:** Have there been other times when you felt intimidated at the board?

**Mr. J. Walker:** Yes, there was another incident about four weeks ago. I was called by Mr. Sims to be present in his office at which time we discussed my relocation as I was driving an inordinate distance to the office. Mr. Sims told me at that time the ministry had decided to go with the rotating board and what they were bandying about was the tenure of that rotation. He suggested it might be well to reconsider any big move on my part, in which case I would find myself in a situation I might not be able to carry.

**Mr. M. N. Davison:** You referred earlier to the December 5 meeting. At that meeting Mr. Sims mentioned Mr. Drea's speech or speeches in the House. He said words to the effect that, "We now know what our

guidelines are, exceptions should be forgotten." Did you feel intimidated by that statement?

**Mr. J. Walker:** Yes, in a manner I did. Let me rephrase that. I did not feel intimidated but I felt pressured. I got the idea that Mr. Drea was very involved in the procedures of the censor board.

**Mr. M. N. Davison:** Are there other things that have happened to you at the board that you would like to bring to the committee's attention at this time?

**Mr. J. Walker:** There is only one incident which comes to mind, at which time Mr. Sims chastised me in front of two members of the office staff and accused me of not doing my job.

**Mr. M. N. Davison:** Why?

**Mr. J. Walker:** At the time, several members of the board were out of the room censoring advertising which is also part of our responsibility. Mr. Sims thought we should be in the room watching films and we should stay in the room to watch films.

**Mr. M. N. Davison:** Do you think it is appropriate for Mr. Sims and/or Mrs. Brown to withhold from members of the board correspondence directed to them in their capacity as chairman and vice-chairman?

**Mr. J. Walker:** I did not appreciate that.

**Mr. M. N. Davison:** Do you find it difficult to do your job at the board when such information is withheld from you?

**Mr. J. Walker:** I think it is tantamount to making a decision without having all the relevant information in front of one.

**Mr. Williams:** Mr. Walker, my records indicate that in 1977 there were 822 films processed by the board and of those, 175 were edited, the public showing of 11 was left pending and only three films were censored out of the 822 that were shown. Can you indicate to the committee what the pattern was with regard to 1978 and 1979?

**Mr. J. Walker:** Can I indicate to the board?

**Mr. Williams:** Yes. Has a similar pattern been followed as to the percentage number of films that have been either edited or censored?

**Mr. J. Walker:** I cannot answer that. I have not been privy to the annual report for that year and I have been at the board only since November, so I do not feel I am qualified to answer that.

**Mr. Williams:** From your personal knowledge, how many films have actually been censored by the board in the past two years?

**Mr. J. Walker:** In the past two years, I could only hazard a guess. In the last year—this is only hearsay—I think it is in the neighbourhood of 1,500.

**Mr. Williams:** How many?

**Mr. J. Walker:** Fifteen hundred.

**Mr. Williams:** Fifteen hundred what?

**Mr. J. Walker:** In the past year.

**Mr. Williams:** Is that films that were shown?

**Mr. J. Walker:** Presented, yes—submitted.

**Mr. Williams:** No, my question to you was, how many were censored by the board?

**Mr. J. Walker:** I do not have that information.

**Mr. Williams:** Do you feel in your personal view that the activities of the board, based on these percentages, reflects a liberal or a conservative attitude toward the censoring of controversial portions of films?

**Mr. J. Walker:** I do not feel I can answer that for the reason that it would depend upon the content and the expression of the film submitted.

**Mr. Williams:** One of the arguments raised by those who oppose any form of censorship suggests that the removal of explicit sex scenes from films detracts from the artistic quality of the films. Would you share that personal conviction?

**Mr. J. Walker:** I think the films have to be studied in context and a decision would have to be considered with its relative merit to the context of the film. Personally, in "porn films" I would not feel amiss in taking out certain scenes.

**Mr. Williams:** Do you feel that, with regard to the film *The Tin Drum*, the removal of the four sex scenes contributed to or detracted from the artistic quality of that film?

**Mr. J. Walker:** I think the removal of three scenes would.

**Mr. Williams:** Would it detract or contribute?

**Mr. J. Walker:** It would detract. I only felt compelled to demand one.

**Mr. Williams:** Was that strictly for artistic reasons and not for reasons of morality?

**Mr. J. Walker:** The reason I requested one elimination was due to the guidelines with which we had been presented. I felt that scene was the only one which in my view contravened the set of guidelines.

Mr. Williams: You had no personal uneasiness about the other scenes.

Mr. J. Walker: No, I did not. I did not feel the child was being exploited.

The Acting Chairman: Thank you very much, Mr. Walker. Mrs. Mary Brown, will you take the oath?

Mrs. Mary Brown sworn.

Mr. Breithaupt: Perhaps I can start off. Mrs. Brown, as I understand, you were appointed to the board in April 1978 and were made assistant director on December 1, 1979.

Mrs. Brown: No, that is incorrect.

Mr. Breithaupt: Perhaps you could give me the correct dates.

Mrs. Brown: It was the previous year. I have been on the board since 1977.

Mr. Breithaupt: Thank you. Were you involved in the preparation of the guidelines to which we have been referred, that is the item of January 16?

5:40 p.m.

Mrs. Brown: No, the preparation was taken from notes. It is interesting. When I first joined the board this set of guidelines was given to me because the first time on the board it is very difficult to walk into a situation. I found them very helpful.

At the January meeting of the board, members requested some kind of guidelines. At their request for guidelines I felt compelled not to impose my standards on the board, so I researched things that had been helpful to me. When I distributed them to the board under Mr. Sims' signature I intimated this was a starting point only. Subsequently, I have submitted reports from the special Project P and reports from the American motion picture association—all those guidelines—and have indicated in two meetings the desire to sit down and work out guidelines that would be acceptable and comfortable to all members.

It was important, I think, to have guidelines. This was only the beginning and they were guidelines I felt had been accepted prior to my arrival at the board and would be a good starting point.

Mr. Breithaupt: The material upon which you based your guidelines, I presume, was a summary such as the one prepared by Mr. Cunningham and perhaps other material. Yet, while it would appear that these were to be a first step, with the way they are written with the direction of the chairman, it would appear they do not allow for much variance. The matter of the guidelines

based on community standards being set out in the first place, however they might be defined in the questionable material, are things which we no doubt could agree on as background material for this kind of approach. However, the phrase "we do not allow," underlined and in capitals, followed by a list of certain pastimes, would make it appear this is a pretty definite document and not a first step or a hopeful development.

I understand, of course, that the board was formed in 1911 and in the early 1920s there were some general guidelines, probably dealing with sound if nothing else. I would think that some further involvement on these guidelines would be important. How have you progressed in developing and expanding upon this document?

Mrs. Brown: First, I would say that Mrs. Sexton was mistaken that I intimated these were firm guidelines. I made it very clear they were not. I think she omitted to submit the subsequent memorandum which reads—these are the minutes of a meeting that was held after the discussion about the rigidity of guidelines—" . . . since scenes listed under the heading 'We do not allow' in the guideline memorandum constitute current board policy, any recommended deviation from these guidelines must be brought to the attention of the full board, be approved by the majority and be accompanied by a brief memorandum indicating the reason for the recommended deviation."

For example, if a board member felt he should deviate from the guidelines, for example for redeeming social values or something integral to the plot, then exceptions could be made. That was the next day after the instruction. I would like to table that.

I would also like to table the subsequent information I circulated to the board to help in our resolution and our coming up with guidelines that were acceptable to us all. That is the Project P research, their recommendation to the committee and also the updating comments by one of the members of the force.

Mr. Breithaupt: I think that would be most helpful. Thank you, Mrs. Brown.

Mr. M. N. Davison: May I read something to you? "The strength and credibility of this board lies in the exercise of each individual vote on classification and/or censoring of films. Each member brings to the decision-making process a different educational background, expertise in lifestyle, experience within the community. I will continue to foster an environment in which the contribu-



tion of each member is valued and where influence from inside or outside the screening room is limited to the personal research and experience of each of us and to the information available to us as a board as a reflection of community standards."

Do you agree with the sentiments expressed in that statement?

**Mrs. Brown:** I am very glad you brought that up, Mr. Davison. That is a statement of what I believe, and that was thought out carefully.

I am very recently a member of administration or management. For two and a half years on the board I felt pressure. I felt pressure on the Pretty Baby issue. I felt pressure on the Luna issue. I felt pressure from many points of view, pressure against my vote on what I considered to be community standards.

I think it is particularly relevant, Mr. Davison, in terms of that letter from Mr. Golden. That letter was directed, appropriately, to the chairman of the board.

**Mr. M. N. Davison:** Is this the letter that was withheld from the board members?

**Mrs. Brown:** It was not withheld; it was addressed to the chairman of the board. It is his decision—and it was by way of a second appeal—it was the director's decision whether or not to pass relevant material on again.

**Mr. M. N. Davison:** It followed a letter to Mr. Sims withdrawing the film from the consideration of the board, did it not?

**Mrs. Brown:** No, we're talking about the letter that has been the issue. Now let's go back to what you just read.

**Mr. M. N. Davison:** It followed a letter withdrawing the film.

**Mrs. Brown:** Yes.

**Mr. M. N. Davison:** Yes; which was also withheld from members of the board.

**Hon. Mr. Drea:** Let her finish.

**Mrs. Brown:** Let's go back to my statement.

In effect, the formal request for a second proposal to the board came after a consensus had been reached. It was still the director's decision whether to allow this second formal appeal to the board. In any case, it was too late.

I do not know what the director's decision would have been had the letter arrived three days earlier. To me the letter was irrelevant. Our voting procedures, our mandate, is community standards. Whether or not the distributor is ready to accept one cut or two cuts is totally irrelevant.

We had too much intimidation up to then in terms of all the criticism that had been launched at the board. Really, I think the temptation would be very strong to betray our mandate and to vote for one cut. I think it would have been a betrayal of our trust to have done that. I think it would have been putting unnecessary pressure on the board to have delivered that compromise at that time. We have been through a lot.

However, it did come too late. It was not my decision whether or not to pass on that information.

**Mr. M. N. Davison:** On May 1, then on May 7, there were decisions by votes. They were votes of the board at which the majority vote was in favour of one cut in the film, *The Tin Drum*. Why did those two votes not result in elimination sheets being circulated to members of the board for signatures?

**Mrs. Brown:** That's very interesting too. I think the reason elimination sheets were not circulated was because a majority of the board members were not happy with that cut. Miss Enright had unofficially expressed the opinion that that cut alone would have been overlooking the two most important and crucial ones.

No majority on that board was happy with that one cut.

**The Acting Chairman:** Mr. Williams.

**Mrs. Brown:** I must finish this. It's very important.

The procedure on the board for eliminations is an informal one. When any member of the board feels a consensus has been reached, that member makes out the elimination sheet by hand. It is then circulated to the other members and signed or initialled. The office manager does not initiate these sheets. Administration does not. Board members, at any time they felt there was a consensus, could have circulated an elimination sheet and initialled it.

Each member has one vote. I have one vote. Mr. Sims has one vote. Any five members at any time could have circulated the sheet and it would have been a fait accompli.

**Mr. Williams:** I want to be clear there, Mrs. Brown. Is that how the initial vote was taken with regard to this film, *The Tin Drum*, by circulation of an elimination sheet?

5:50 p.m.

**Mrs. Brown:** Yes, I would like to clarify one point there, too. I think Mr. J. Cunningham perhaps did not remember accurately how the first vote happened. He had originally voted for rejection of the film. When Mr.



Sims had finished his viewing of the film he gave me his elimination sheet. I took my book and went back into the screening room, where they had already started another film, for a very informal discussion of what the vote should be.

At that time I spoke to Mr. Cunningham and said: "Joe, you have voted to reject the film. No one else obviously has. If, in effect, the film cannot be rejected, are there any eliminations you would like to see?" Mr. Cunningham was the first one to name the eliminations. I did not. It was not until after Mr. Cunningham had named them and Mr. Walker had indicated his eliminations that I showed my book, and also Mr. Sims's, and said: "Those are the four eliminations that we too had requested. We, therefore, have a majority and I will circulate the elimination sheet."

**Mr. Williams:** Mrs. Brown, do you feel a member of a film censor board such as this can play any useful, objective role in the process and fulfill his or her duties if that person does not fundamentally believe in censorship?

**Mrs. Brown:** I think it would be extremely difficult, but I also think it's possible. It's possible because, if one really recognizes one's mandate, one has to forget what one thinks personally. I felt as much demand on me to find out where the community was as to censor film.

That is why I have spent many hours visiting communities, associations, high schools and universities during the past two years. I wasn't going to seek publicity. I was going to find out what the community standards were. I was a week on the board when I realized that my opinions were not important.

I think that is the reason why, when the Life of Brian came to us and I personally found it offensive, I knew at the same time the majority of the community probably would not. I not only voted to pass the film, Life of Brian, I wrote the apology for it.

In terms of my research on community standards, I would also like to table at this time the associations, the media, the universities and the law schools I have visited in order to research this and to speak. I think there is only one church group in this.

**Mr. Williams:** As a matter of fact, I wanted to ask you about the values you apply, the community standards as you perceive them and how you have developed those since you have been a member of the board.

**Mrs. Brown:** I cannot apply my personal standards. I am responsible to the community. Many people say, "Who are you to decide for me what community standards are?" It was just two months ago, after a two and a half hour session, in a court, that I was declared on the basis of my personal experience and research to be an expert witness on community standards for Ontario.

**The Acting Chairman:** I believe that will have to conclude. I hoped, at the beginning of this session, to give a couple of minutes for each member of the different parties to sum up. Mr. Breithaupt, do you wish to do that for your party now?

**Mr. Breithaupt:** I have been impressed with the evidence and comments of the members of the board of censors. It unfortunately, appears, however, that we have yet another example of administrative breakdown in an important Ontario board.

We know of the case of the Ontario Highway Transport Board and the United Parcel Service Canada Limited case. Yesterday and today four members of the board of censors have said they have felt intimidated in their duties. Procedures have been poorly defined and from time to time they have certainly been inconsistent.

I believe a form of film censorship is required in Ontario. However, the Ontario public, to be well served, must have standards, regulations and guidelines that are clearly public. In each of those areas activities must adhere to those standards, regulations and guidelines and we must expect equity and fairness.

This standing committee has almost become seized of this matter in an appeal form, which is not our function of course. The appeal position within the act should be reinstituted.

As I have said, I believe there is a need for film censorship in Ontario to protect our children from sexual exploitation, if for no other reason. Beyond that, the activities and procedures within the board at the present time unfortunately leave much to be desired. I would hope the minister would seriously consider the evidence that has come before this committee yesterday and today.

**Mr. M. N. Davison:** Clearly members of the board have been pressured and intimidated, not only over The Tin Drum, in which case they have been put through an absolute wringer. It must have been an incredible and emotionally difficult ex-

perience for them. I think that what passed for procedures at the board are completely unacceptable and there will have to be changes. There will have to be clear procedures and guidelines at that board.

I think also that at the board this pressure and intimidation has been part of a larger pattern, clearly directed by the administrative component of that board. I think there is a component of involvement on the part of the minister in the larger pattern, with the statements he has been making and the way those statements have been taken by members of the board.

We can't end here. A couple of things have to happen. First, I would like to request that the board review its decision on *The Tin Drum*. Second, I think evidence has come out, even in the short hours we have had at this committee, that there have been suppressions of decisions of the board and intimidation of board members. It's good we have had people from the Attorney General's office attending these meetings and I would request that the Attorney General review the evidence submitted at these hearings and consider whether a judicial inquiry would be appropriate.

I think there is no other option left at the moment because the House is adjourning for the session. Given what has happened with other boards, agencies and commissions of this government, there is also a strong argument to be made that this is part of a pattern in our boards. I think some investigation of that has to be undertaken, perhaps in the next session of the assembly.

**Mr. Williams:** In conducting this inquiry with regard to the board members, I feel it was embarked upon on the basis of looking into the procedures of the board. It seems to me this process has been used more as a vehicle to endeavour to cause some embarrassment for members of the board by concentrating specifically on the film *The Tin Drum*. The fact the film was dealt with by the board in the manner in which it was seems to continue to create aggravation among certain sectors of the community.

On the other hand, while we have been dealing primarily with procedures, the value of the censor board has been proven here today beyond doubt in the manner in which the board endeavours to maintain community standards. Without the benefit of the censor board it appears that, based on the quality, types and subject matter of films that are coming into the province today in great quantities, along with the other types of pornographic literature and material that

is flooding the marketplace, these community standards would be further undermined. If it were not for the film censor board, we would be in more dire straits today than we are at this time.

I think the board is one bulwark in trying to reverse this flood of pornography that has spread across the province. I think they should be commended, notwithstanding the fact that other members have been critical of some of the behaviour of the individual members of the board and of the procedures. I think that's the smaller part of the issue before us.

**Hon. Mr. Drea:** The members, frankly, have been excellent today under the time conditions. I will restrain myself to the same amount of time they received.

First of all, in reply to Mr. Breithaupt: for some time, and I think you will recall in previous estimates, the question of community standards and written guidelines has come up. There has been an endeavour by the board—we have heard about it particularly in the last year—to get those written guidelines in place.

I want to make absolutely sure the board understands it within the context, because I understand it, that when certain members of the board have said they did not use guidelines they are talking about just that written set. I think if we had a much longer time, they would have told you the guidelines they have used over the years. With the exception of the odd films—and I want to draw to your attention the question of *Luna* and the statement that *Luna* was rejected; *Luna* was not rejected. When the producer met the cuts it showed very briefly in Toronto and closed for lack of attendance. The impression was left the other day that it was rejected, it was not.

This has been an ongoing process, Mr. Breithaupt. There should be written guidelines. They should be public; no question. As a matter of fact, Mr. Millard Roth's group, the Canadian Motion Picture Distributors Association, agreed on that. They presented that to me and at the same time they asked for a rotated board. At that time, way back in the winter or the early spring, I told them that Mr. Sims was rotated. No question about it. They had asked for that because they did not want another duration of Mr. Silverthorne or George Belcher, the assistant director, who spanned many decades.

Just to go into it, the difficulty of the civil servant/public servant by order in council, that dichotomy, which I do not have time to go into, made it logistically difficult, but we

were proceeding. That was well into the winter. What the Canadian Motion Picture Distributors Association did with that I do not know. I did not ask them to keep it quiet. Whatever their conversations were with my deputy and I, they are a matter of record. I am sure I can say that.

So there is no question about those guidelines; and indeed, perhaps, the procedures. I personally think the procedures, in their technical sense, have been carried out. Perhaps there should be a more formal type of procedure, and I will certainly look into that.

I have one last remark about this celebrated speech that has been mentioned a number of times. I never made a speech in the House on this. I answered a question. The question was from the member for Hamilton Centre. On the basis of his remarks,

that is the last question from him I will answer on this subject. I shall so file that with the Speaker. If the minister cannot answer a question, then we have come to a sorry state in the assembly.

**The Acting Chairman:** This concludes this committee meeting and this phase of the committee work at this time. I want to thank the witnesses and I want to thank the committee for their general good nature in the questioning.

I would suggest that perhaps we not carry the vote. There are a number of items in this vote. I think it is better to leave this open and the committee can order its time at a later date. I declare this committee meeting adjourned.

The committee adjourned at 6:03 p.m.

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No. J-21

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations



**Fourth Session, 31st Parliament**

Wednesday, October 29, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, OCTOBER 29, 1980

The committee met at 10:07 a.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (continued)

**Mr. Chairman:** I will call the committee to order. I have one substitution. Mr. Jim McGuigan will be substituting for Mr. Jim Bradley on the committee. Are there any further substitutions? Fine.

When the committee last met, we had agreed to hold off a section of three hours to be devoted to food pricing. Part of that agreement was that we were to deal with the Ontario Board of Censors. Mr. Breithaupt has sent a letter to the Minister of Consumer and Commercial Affairs (Mr. Drea), and kindly has supplied me with a copy confirming he discussed with the New Democratic Party critic a proposed schedule, which is as follows: Today, three hours on food pricing; October 30, two and a half hours on technical standards, aluminum wiring; Friday, October 31, property rights and the registrar general; Wednesday, November 5, three hours on liquor licensing; and Thursday, November 6, two and a half hours on rent review. Copies of this will be available to the minister's staff from our clerk.

I gather the minister agrees with that schedule. We have a problem in that the minister is not available on one day.

**Hon. Mr. Drea:** The minister is available. I have no objection to it, but you do not have Friday of this week on the schedule. The original one I got has; there was a motion here. I have no quarrel with the schedule. It just seems out of whack to me, that is all.

**Mr. McGuigan:** Mr. Breithaupt mentioned that if you were available—

**Hon. Mr. Drea:** I am available.

**Mr. McGuigan:** —he would move it up, so it changes to the hours you want.

**Hon. Mr. Drea:** Okay. Fine.

**Mr. Chairman:** We agree on the order, then?

**Hon. Mr. Drea:** Yes.

**Mr. Chairman:** Thank you. We also agreed we would carry vote 1504, is that correct? Shall vote 1504 carry?

Vote 1504 agreed to.

**Mr. Chairman:** Did you have a question on that, Mr. Renwick?

**Mr. Renwick:** Not on that. I would like to have 15 minutes at some point during this schedule, not for my benefit but because of what has happened in the securities field since we last met. Could we have 15 minutes, maybe half an hour allocated?

There is nothing mysterious about it. If the minister is agreeable, I am anxious that representatives from the Ontario Securities Commission, presumably including Mr. Salter, the new chairman, could be available to talk about the takeover problem and, in particular, the Royal Trustco one.

One immediate concern is the extent to which there is public information available with respect to the monitoring of Stelco and in respect to those shares. We do not want to find Stelco's control has disappeared without us having an opportunity to pass necessary legislation, either here or in Ottawa, similar to the trust company legislation, to protect the control of that basic industry as far as it affects us here.

**Hon. Mr. Drea:** Yes. I would be absolutely delighted. Where were you when I needed you when the Royal Trust thing was ebbing and flowing?

**Mr. Renwick:** I do not know where I was, but I did have the suspicion that, when the big boys are playing, we little people should know what goes on.

**Hon. Mr. Drea:** Yes, but while the big boys are playing, they are also playing with another big boy.

**Mr. Renwick:** I am just asking for half an hour, and the sooner the better, if possible, Mr. Chairman.

**Hon. Mr. Drea:** I can always have the staff available. I am just trying to find a suitable time. I am wondering, Mr. Renwick, and not just about the Stelco one. As you

know, we are taking a position on the whole insider matter and reporting by the tenth of the month.

10:10 a.m.

**Mr. Renwick:** The Stelco one is immediate in my mind because I have seen this flow happen before. Suddenly somebody puts it together and we have not got it, even though there is no technical breach of the takeover, until the tenth of the month.

**Hon. Mr. Drea:** I think you have read Mr. Knowles. I suggest that, unless members of the committee have some rather lengthy things, next Wednesday might be conducive. Traditionally, the registrar general's vote does not take terribly long and we have a full three-hour period.

I did not draft this. I had nothing to do with this and neither of the two people who did is here. Could we come to a tentative thing for next Wednesday?

**Mr. Renwick:** If that is agreeable, Mr. Chairman, that will be perfect for me.

**Hon. Mr. Drea:** I would want Mr. Knowles, Mr. Bray and Mr. Salter and it is a question of their being able to put their commitments aside because we have a number of very fluid situations. The Royal Trust situation is still under scrutiny. Could I give them some idea, at least, of what the day is?

**Mr. Renwick:** I have no series of questions or anything. What I am interested in is that it be on the record of this committee for this session that we have had full disclosure, to the extent the law permits, about these matters in the securities market of concern to all of us.

**Hon. Mr. Drea:** Is it agreeable, Mr. Chairman, that I look towards next Wednesday?

**Mr. Chairman:** Yes.

**Mr. Swart:** I presume we are proceeding with the item on the agenda.

**Mr. Chairman:** We have carried 1504. Now we are going back to the item on which we agreed to give you and members of the committee three hours on food prices.

On vote 1502, commercial standards program:

**Mr. Swart:** I notice in the motion which we have it says, "Three hours, food pricing, Mel Swart." I want to assure you I am not going to take three hours. I presume there will be others taking part in the discussion including, of course, the minister.

Last year was the first time this committee set aside a few hours specifically for the discussion of consumer prices and this year it is being repeated. I am happy to carry this for

our party and I predict it will become, and must become, an increasing part of the concerns of this ministry and of the Ontario government, and of government action. This is true for at least four reasons.

First, price escalation in the future is likely to increase rather than decrease. Second, people are getting hurt by high prices, particularly those with lower incomes. Third, when government applies restraint on wages in the public sector and, indirectly, to the private sector it must ensure there is restraint in profits and prices as well. Fourth, the market system, with near monopoly control in many areas, provides inadequate protection for the consumer.

In this party, we recognize these problems and will do everything in our power to see the consumer is not ripped off. It will be accomplished through a combination of measures of the normal competitive system with measures to ensure, as much as possible, true competition be accomplished through economic planning to ensure self-sufficiency wherever possible and intervention to require justification of price increases with the power to prevent them or even roll them back when the increases are excessive.

We intend to continue to raise price issues which are of concern to consumers and we expect you, Mr. Minister, to take a new attitude, to recognize that there are problems and that you cannot continue to defend every price hike or take a hands-off position. Your record has been an encouragement to corporations to get all the market will bear, some sort of blind faith that what is good for the corporations is good for Canada and that, if you leave everything to the so-called marketplace, it will work out fine. Your adherence to these beliefs is so blind you defend the corporations without doing any in-depth investigation, often no investigation at all.

What you do is done half-heartedly and for the purposes of supporting the corporations and with an almost unbelievable degree of ineptness. You made only two serious commitments about bringing an investigation into prices and in those you stalled at a half-hearted, incorrect report. Those two commitments were made in this committee last year.

The first was made by the minister, as recorded in Hansard on October 31, 1979, when Mr. Drea said: "I just want to say to you"—this was after considerable pressure from my colleague Mr. Renwick and myself—"that we will devise a comparable shopping basket of 25 or 30 very significant, basic, essential

products. We will take one size for rather obvious reasons. When I talk about household products, I mean such essentials as cleaners or some of the more basic personal products such as towels and tissue and so forth. We will do it monthly, alongside the monitoring report we do on food prices in Ontario."

The exchange refers to a monitoring of food prices in the United States with the suggestion by the minister that perhaps it would be done in the Michigan area. As we know, that has not been done. A year has gone by. None of the food monitoring reports have any of these prices in the United States. I suggest that is inexcusable when that kind of commitment is given.

Then there was a commitment to do an investigation made that same day by the minister after I had raised the matter of paper products, particularly the tissues, over some period of time. Mr. Drea gave us a commitment there would be an investigation into tissue products in these words: "Mr. Swart, in order to clear the air on toilet tissue, which seems to vary from day to day, I will have our chief economist complete an in-depth investigation. It will take some time but I will send you the results of that before the next session commences, Mr. Swart.

I asked: "Would you do one thing further? Would you have him"—I didn't realize it was her at that time—"contact me occasionally during that?" The answer from Mr. Drea was, "Yes, Mr. Swart . . ."

During whatever investigation was done I was not contacted on one occasion, even though that commitment had been given. The report was not submitted to the House until May 16, although it had been promised before the session started. I suggest that report was a whitewash of the forest products industry, rather than an in-depth investigation. I want to deal with it to some extent.

That report was titled, A Statement to the Legislature by the Honourable Frank Drea, MPP, Minister of Consumer and Commercial Relations and was tabled on May 16, along with his statement. His statement on that report on paper tissue products ended up by saying, "The facts on this matter are contained in the document I have tabled today and I trust the member opposite will in future use careful judgement and more complete data when charging our Canadian companies of ripping off Ontario consumers."

I want to say, unequivocally, that every single charge I had made was proved true. This was after the minister's letter of September 1979 in which he gave detailed figures

about prices in the United States of E. B. Eddy Soft and Pure toilet tissue which had been proved to be incorrect.

I want to take time to go over a few of these because I think it is important. The minister states on page one of the report, "First, I would like to comment on the charge that a claimed 13 per cent increase in the retail price of bathroom tissue in Ontario in the last nine months is attributable to a ripoff by the E. B. Eddy Company."

Of course, I had never said that. I have my press release in front of me. It is very clear what I said in my press release. I said: "There is no possible justification for the retail price of tissue increasing by 13 per cent in the last nine months. How can it be justified when the profits in general of the forest products industry jumped 60 per cent in 1979 after a massive 100 per cent increase in 1978?"

10:20 a.m.

I did not accuse E. B. Eddy Forest Products Limited in any way of being responsible for that 13 per cent or it being attributable to a ripoff by the E. B. Eddy company. This was a general statement which I had made. The minister just tied the two together in this report, clearly just to confuse things.

Mr. Chairman, I would like to deal with another item. I state in my press release, "After allowing for the dollar differential, sales tax, US import duties and all other factors, its net price to the United States' super-markets is lower than it is to its Ontario outlets." That was the E. B. Eddy's Swan's Down and Soft and Pure. By the minister's statement that was proved to be correct. In fact, it was lower.

At the bottom of page two of his statement: "In a further example of comparative wholesale pricing of the two E. B. Eddy products in question, the difference in the wholesale price between Canada and the United States was 3.9 per cent per case of 96 rolls lower in the United States than it was here." That, in fact, bears out my submission.

Missing from the report was a very significant section. In my press release I had pointed out that although there was a tremendous price differential between tissues in this country and the United States, the lumber prices in Ontario were higher than in the United States by about 17 per cent; but with regard to newsprint, the paper companies, the forest products industry sells newsprint in Canada in Canadian dollars at the same price they export it to the United



States in US dollars. In other words, the consumers of newsprint get their product at Canadian prices; the consumers of lumber do not. And the consumers of tissue get it at American prices, approximately, plus any import duties, even though all of it is made in this country.

In the report, the minister does not even mention why this takes place. I would think there should be an onus on the ministry, if it is going to do an investigation, to say why consumers are paying these tremendous differentials for products which are produced in Canada, sold in the States much cheaper than they are sold here and yet, when it comes to newsprint, it can be bought here much cheaper than in the United States.

This was a main thrust of the whole question of the ripoff on tissue and other paper products, exclusive of newsprint, in this nation. Yet it was not even mentioned in the report.

The next item in the report I want to mention is the comment by the minister, "In the United States' market, E. B. Eddy is not a price setter; therefore, when the company's latest price increases were announced on October 8 they were not matched by similar increases in the United States."

I want to say that is just not so. The timing was not identical, but most of the United States companies more than matched E. B. Eddy's price hike.

For instance, while E. B. Eddy's Soft and Pure went up from \$21.50 to \$23.40 per case wholesale, Cottonelle, a Scott Paper product, rose from \$19.25 to \$25.40, White Cloud went from \$19.85 to \$25.40. Surely that information was available to the minister and his staff. It is unfortunate that in the slavish defence of the Eddy company and the other corporations, he gave that kind of incorrect information.

Even on the question of duties the information was incorrect. The report says that there was an import duty of 8.5 per cent. The previous fall there had been an import duty of 8.5 per cent, but when this report was prepared, and for a substantial time in advance of that, the duty was 8.1 per cent. This could be confirmed by just calling the import office, the federal office; they could have found this out.

Also in the report there is the statement that in comparing tissues you cannot go by weight. This, in fact, is quite an amazing statement because it was the sole criterion the minister had used in comparing the tissues in his report to this committee last fall. I have here, Mr. Chairman, that report

on bathroom tissue and paper towels which was tabled in this committee. The whole comparison of prices on that page is done with regard to weight. Yet when the report was brought into the Legislature, when I had done a further comparison with regard to weight, the report stated that was not a proper way of comparing tissues. Surely if it is good enough for the minister, in his original report, there should be some credence given to that in my statement.

Mr. Chairman, I suggest to you this is indicative of the kind of report—and this is the most comprehensive we have received from the minister on any product—that is done. The inaccuracies in it are inexcusable, the omissions in it are inexcusable; what is there bears out the charges I have made.

The minister's replies to all other questions on price hikes show the same pro-corporate bias, indifference, sloppy research, and ineptitude. And I would like to deal with a much more recent one, if I may now, and that is on the question of milk prices.

Members of this committee will know that in the middle of August the farmer received an increase of 2.8 cents per litre for milk. It took him a long time to get this. It had to be justified with the Ontario Milk Marketing Board. There was opposition from the dairies, but eventually he received an increase of 2.8 cents per litre. The board stated at the time that, in fact, on costs of production he was entitled to 4.5 cents, but it was going to allow him 2.8 cents.

I think we would all agree that as a result of that increase, and immediately, the price of a litre of milk went up seven cents, two litres went up 13 cents, and the three quarts went up 17 cents. The dairies and the supermarkets did not have to justify their increase in any way, unlike the farmer, who had a very lengthy procedure and had to go before a board.

I say to you, Mr. Minister, you did not even bother to look into that price increase, although I called on you at the time to do an investigation. If I am wrong, then I hope you will table the report before this committee.

10:30 a.m.

I would like to ask the minister if it did not bother him that the price of milk had gone up something like 30 per cent—and that is true whether you look at the litre, two-litre, or three-quart containers—since January 1, 1979. I am sure we would agree that milk is a pretty important commodity. Did it not bother you that the latest price hike would inevitably reduce consumption, particularly



by the large and low-income families who are most in need of the milk? Did it not bother you, the manner in which dairies and supermarkets implemented the increase? They made their large markup at the same time the farmer got his modest increase so the farmer ended up getting most of the blame for it.

Did the statistics not bother you which showed that during the period 1969 to 1978-79 the number of fluid milk companies in Ontario dropped from 163 to 51? You did not do any investigation at the time I called for it. Then my leader raised this issue in the House just a few days ago. He mentioned that there had been a report tabled in 1977 with regard to the markup on milk. Amazingly, you said at the time that you were not aware of any such report, which must bring into question the depth of any investigations you had done about the increase in the price of milk during August.

There are some pretty significant statements in that report. For instance, it states on page 21 that it would appear if the average retail price of milk in 1974 and 1975 had been about one to two cents per quart lower, retailers would still have realized adequate margins on fluid milk. It goes on to say, on page 25: "The public is entitled to some protection since one cannot assume that there will always be sufficient competition throughout the marketing system to ensure that margins and prices do not reach excessive levels."

"To protect the public interest in this regard, a continuous monitoring of wholesale and retail prices and margins on fluid milk should be carried out, with the intent of identifying the existence and causes of any extraordinary and unjustifiable excesses."

I realize this report was made to the Ministry of Agriculture and Food by the Milk Commission of Ontario; it was not made to your ministry. And, of course, if it had been, you were not the minister at that time. But surely, when the markup on the price of milk went up to the degree it did this past summer, you should have looked into all the reports and got all the information possible to determine the background, and whether there was anything that could be done. Yet you were not even aware of this report, on the recommendation that there should be ongoing monitoring of the margins and the markups on milk.

Secondly, you made a flat statement: "When the leader of the third party talks about the increase, he gives the impression

that the farmers received the lower end of total cost. The truth of the matter is that the farmer got 55 per cent, based on the raw milk cost."

**Hon. Mr. Drea:** Fifty-six per cent.

**Mr. Swart:** Later on you said 56 per cent. I am quoting from Hansard.

Then you do state further on that—

**Hon. Mr. Drea:** I do not want to interrupt you, but they made a mistake. Just keep it accurate.

**Mr. Swart:** You state first, I quote, "The truth of the matter is that the farmers got 55 per cent, based upon the raw milk cost." In a further reply, you answer a supplementary.

**Hon. Mr. Drea:** I am sorry, Mr. Swart, under raw milk cost—yes, I understand. One was on raw milk, one was on the three-quart size.

**Mr. Swart:** That is right.

**Hon. Mr. Drea:** Sorry to interrupt.

**Mr. Swart:** The facts are they did not get either the 55 or the 56 per cent increase. They get it if you base it solely on the sale of milk in three-quart packages but the first statement I read says nothing about that. "The truth of the matter is that the farmer got 55 per cent, based upon the raw milk cost" is not a correct statement. They did get that much out of three quarts, but if you take into consideration the one-litre and the two-litre containers, that is incorrect. About one third of all the milk is sold in the one—

**Hon. Mr. Drea:** One quarter.

**Mr. Swart:** One quarter to one third.

**Hon. Mr. Drea:** No, one quarter.

**Mr. Swart:** I have figures here—granted they are 1975 figures; there may have been some reduction since then.

**Hon. Mr. Drea:** If you will accept my 1980 figures, it is three out of four, honest to God, I give you my word.

**Mr. Swart:** Even if it is, if you compute that in with the three-quarts and where they got the seven per cent and the six and a half per cent increase, it does not come out to the 55 or the 56 per cent. It is somewhat lower than that.

In addition to that, if you go back for 1979 and 1980 you will find that of the 30 per cent increase in the retail price of milk, the farmers got only some twelve thirtieths. There was, as I am sure you are aware, a one cent a quart increase last January; there were increases last November; and there was a changeover to metric in which the dairies received, for actual volume of

milk, some three or four per cent more. So, in fact, the farmers got only about 12 per cent out of that 30 per cent increase, and the farmers' share of that has been dropping rather dramatically. Your government's own figures show that in August 1975 the farmer got 54.4 per cent of the retail price of milk. Now that is down to 51.8 per cent.

You stated, Mr. Minister, on October 27 in reply to the question of my leader: "I think there is something else that the leader of the third party should be aware of. This has been a rather dismal, and continues to be dismal sector for the dairies. I don't think one has to read any more than the financial pages to see the very precarious position that dairies, not just in Ontario but indeed across the country, are in."

I say, categorically, Mr. Minister, that statement is not correct. The Royal Commission of Inquiry into Discounting Allowances in the Food Industry in Ontario stated there was a 15.5 per cent return on equity after tax to the four major Ontario dairies, which handle something like 70 to 80 per cent of the milk that is sold in Ontario, and the judge had described that as "healthy." That was his term.

If we look at the actual figures, we find that the profits of the dairies, particularly recently, are very substantial and have gone up a great deal. Becker Milk, for instance, in the year ending April 30, 1979, had profits of \$2,266,000.

**Hon. Mr. Drea:** For milk or combined statement? The truth of the matter is it is a combined statement. They make their money on stores.

**Mr. Swart:** Becker Milk is primarily for dairy products.

**Hon. Mr. Drea:** You have not answered my question. Are you talking about Becker's profit on milk, or are you talking about Becker's consolidated report?

**Mr. Swart:** I am talking about Becker's consolidated report. If you have figures separating it to bear out what you have said, I would like to have them.

10:40 a.m.

Becker's Milk Company Limited's net income went up from \$2,266,000 in the year ending April 30, 1979, to \$4,165,000 at April 30, 1980. Sales are up 14 per cent. Profit was up 84 per cent.

Silverwood, in the 1978 fiscal year, had profits of \$1,518,000. In 1979, they had profits of \$2,983,000—

**Hon. Mr. Drea:** Is that Silverwood's profit for milk only, or is it for their consolidated

operations? Silverwood operate stores from which they make most of their money.

**Mr. Swart:** Silverwood is a company which operates a dairy and other things too as you well know, but they have no separated financial statements.

**Hon. Mr. Drea:** So it is the consolidated statement. Thank you.

**Mr. Swart:** Sales are up seven per cent and profits were up 97 per cent. In the first quarter of this year, sales were up 35 per cent and profits were up 94 per cent.

In the first quarter of this year, Dominion Dairies Limited profits were up 26 per cent.

All of these massive increases were before the additional hike, generally, on metric conversion, and certainly before the hike that took place in August of this year.

Mr. Minister, I say, if your figures are taken from milk only, the figures in your statement in Hansard, in which you say it is a dismal sector for the dairies, I would like to have those figures. Because the profits of these dairy companies, even in other areas, are up very substantially. The figures prove that very definitely.

Just one other thing with regard to your studies, or lack of them on milk. You will recall that back in June 1979, one of the first switchovers to metric in Ontario was made in Ottawa. The increase was between nine and 10 per cent.

At the time I raised considerable objection to that, I objected also that they were not, after switching to metric, putting on the equivalent imperial measurements. You told me at that time that would have been illegal.

Examination of the facts proved it was not. You or the Ministry of Agriculture and Food could have ordered it to be shown on the cartons.

You are looking quizzical.

**Hon. Mr. Drea:** I am thinking about something else. It is nothing special.

**Mr. Swart:** It is significant that while in Ottawa they increased their milk price about nine per cent, when the other dairies changed over to metric last spring the increase was something like three to five per cent, not the nine per cent which I had claimed was excessive. I think the other dairies have proved that I was right when I objected to that large increase at that time.

I want to deal very briefly with the sugar issue. The minister will know that I raised in the House, just at the end of the spring session, a question about the increasing price of sugar and asked you to make an investiga-

tion. You wrote back to me on that matter. I want to read two sections of your letter.

I had claimed there was a 30-cent increase on the two-kilogram bag of sugar. In your letter to me of July 7—you obviously could not reply in the House because it was raised on the second last day—you state "Our monitoring does not show a 30-cent increase on the two-kilogram size on June 19 as you suggest."

I want to tell you, Mr. Minister, that not only did I check these out myself, but Charles Ambler and Associates Limited, which as you know is the most reputable price-monitoring firm in Canada, has confirmed with a letter—I will give it to you—addressed to me, dated October 2, which reads as follows: "This is to confirm, as per your request, Ambler pricing quotations for two kilograms of granulated sugar, item code 3350551: June 11, 1980, \$2.79, page 40 of Ambler pricing service; June 18, 1980, \$3.09, page 40 of Ambler pricing service."

I suggest to you that is a 30-cent increase. It is certainly inept, to put it mildly, that you were not aware of that, and it indicates the type of investigation which was done or, rather, not done by you on the subject.

In the last paragraph in your letter, you state, "In regard to your question on United States-Canadian price differentials, I will inform you of our findings when our research is completed." I have not received that to this date.

Again, very briefly, I want to mention the coffee issue. It had been a matter of concern to me that coffee was priced so much higher here than it was in the United States without any apparent justification.

I had brought to me an internal document, which I sent to you, Mr. Minister, when General Foods increased the price of their coffee in June. The internal document showed they would not be buying any coffee for three months as they had enough in stock. Your answer to the press when I asked you to investigate, was: "If Swart has got hold of an internal document, I do not want to get involved in that argument. You had better ask General Foods about it."

I suggest to you, Mr. Minister, that is a pretty serious example of your opting out of your responsibility.

In letters purporting to justify the increase, you stated you had checked and found that the prices were not excessive. I quote from your letter dated October 9, 1979: "Turning to your Ontario-United States price comparison, we have to make adjustments for the rate of exchange. The United States' wholesale

price for a pound of Maxwell House coffee is approximately \$3.20 compared with Canadian wholesale price of \$3.99. At the 15 per cent discount, the converted Canadian price is \$3.39 U.S. This leaves a price 5.6 per cent below the Canadian price, in a market 10 times larger with lower distribution costs."

I ask you, Mr. Minister, and at the end perhaps you would like to comment on this, why did you take the 15 per cent differential on the wholesale cost? They do not buy their coffee wholesale in the United States; they buy coffee beans—coffee beans at the time were \$1.60 U.S. They roast them here and they package them here. All the rest of the input is Canadian dollars. You did not use 15 per cent on \$1.60 US, but on \$3.20 US or double that price, to make it look as though we were not being ripped off so badly by the coffee companies here.

Finally, again I remind you that in the document you tabled here last year on the comparison of prices in Buffalo and in Toronto—which showed that the retail price of coffee was, in fact, 50 per cent higher here than it was in Buffalo—you compared bags of Maxwell House in Buffalo with bags here. They have not sold any bags of Maxwell House coffee in Buffalo for the last three years, and that can easily be verified.

10:50 a.m.

Also on the matter of detergents, I want to mention this very briefly. First, when you gave the wholesale price of all detergent you classed it at \$1.63 although it was only \$1.38. Again, when you tried to give the comparison to show we were not being ripped off here, that prices were not that much higher here than in the United States, you again applied the 15 per cent dollar exchange, even though most of the other detergents and soaps are produced in this country with Canadian dollar input.

Last, but perhaps not least, when we raised the issue of Kraft Miracle Whip you said in the House, in reply to my question about the much higher price here than in the United States, "Mr. Speaker, on November 6 the member for Welland-Thorold asked me to explain why Canadians are forced to pay \$1.05 at Dominion Stores for a 17.6-ounce jar of Kraft Miracle Whip salad dressing, while in the United States at a super-market this is sold at 32 ounces for \$1.07 or only two cents more than a smaller jar."

Then you said: "To proceed with the comparison, we have to convert the US 32 ounce jar into one litre. Doing so we multiply 32 by 1.040843 times 28.41225. Believe me, Mr. Speaker, I am not doing this for comic



effect, I think the member will understand where we are going. This brings the price in the particular supermarket in Buffalo of a comparable product for one litre to \$1.31 US as compared to \$1.56 in Canada." Then you go on again to give the dollar exchange and say this is not out of line.

The multiplication was wrong. It should have been \$1.13 instead of \$1.31. Whether or not that was just a typing mistake, it means a difference of more than 15 per cent in the price. I will hand this in, if I may, using your own formula for multiplying this and using the correct figures.

I repeat, what you have really done in the whole prices field has been negative because the very fact you have defended these corporations, frequently using incorrect figures and providing incorrect information, has encouraged them to get all the market will bear.

There is another area where you have done only a little better and that is in the matter of computerized checkouts. This is something on which you spent about a year in the House and then came out—

**Hon. Mr. Drea:** December until June, six or seven months, keep it right. I told you about computerized checkouts one day here in December 1979.

**Mr. Swart:** I think you will find that was October 1979, but I am not going to quibble over one or two months.

**Hon. Mr. Drea:** It is very important to me. Even on your basis it is only nine months at best. I would say it was about six. Let us keep it right. You are always accusing me of doing things. Why do you not practise what you preach and get it right?

**Mr. Swart:** Mr. Chairman, if it was raised here in October—

**Hon. Mr. Drea:** It was not raised here. I brought it to the attention of the committee.

**Mr. Swart:** Whether you or somebody else raised it, it was raised here in October. The statement on this was made by Mr. Drea on August 1 of this year and I think my figure of eight months or so is quite accurate.

**Hon. Mr. Drea:** It is not 12 months or a year, that is all.

**Mr. Swart:** There is no question the report clearly showed what the people wanted. Ninety per cent of them wanted the tags kept on by the supermarkets. Studies done in the United States, I am sure we all agree, show exactly the same thing.

**Hon. Mr. Drea:** Please, don't mislead. That was a Canadian report. It is the basis

for every government in Canada. Let us make it very plain that it was a Canadian, an Ontario report. It was wholly conceived here. You had some input into it. I would think you would be proud of it. Let us not get into some American thing.

**Mr. Swart:** I made no comment about the report being from the United States when I said previous reports in the United States had revealed the same thing.

**Hon. Mr. Drea:** They are not worth a damn.

**Mr. Swart:** In the report, Mr. Drea asked what the supermarkets were going to do and he wanted to know by August 1. On August 1, he came out with a statement which, to say the least, backed off from his previous commitment that the consumers would decide and would get what they wanted.

I have that statement by him in the *Globe and Mail* last May: "I want to emphasize that, from the beginning, the industry agreed with us that the customer would decide on this matter," said Mr. Drea. "Results of our March 1980 survey showed overwhelmingly that consumers do not want prices removed from individual products at this time."

The question asked was not whether they wanted them removed "at this time." The question asked was whether they wanted them removed. Yet in this report, which came to the House, those words were added. It goes on to state, "Further research advances in computer technology may require additional consideration since the ultimate objective is to harness this new technology for the long-term benefit of the consumer." That can mean a lot of things, but it can certainly mean the stickers will be removed, or the individual prices will be—

**Hon. Mr. Drea:** Have they been removed? You are making an accusation.

**Mr. Swart:** Some of them have.

**Hon. Mr. Drea:** They have been put back on.

**Mr. Chairman:** Order, please.

**Mr. Swart:** I will come to that in a minute. I want to quote from the Consumers' Association of Canada, in a letter which it wrote to me on August 13, 1980, on this matter.

**Mr. Chairman:** Excuse me, Mr. Swart I apologize to the committee but I have a meeting between 11 a.m. and 11:30 a.m. so Mrs. Campbell has kindly agreed to take the chair.



**Mrs. Campbell:** How long is this particular thing to run?

**Mr. Chairman:** We have three hours. We will divide the time equally between each party. I understand Mr. McGuigan has a statement to make. So far, 45 minutes has been used by Mr. Swart.

**The Acting Chairman (Mrs. Campbell):** Carry on, Mr. Swart.

**Mr. Swart:** I want to quote from a letter from Mary Pappert on the letterhead of the Consumers' Association of Canada. It says: "I followed your work regarding the computerization of supermarkets for quite some time and was happy to see that you feel the same as the Consumers' Association of Canada regarding the statement released by the supermarket industry and Frank Drea on August 1, 1980. Our members across Canada immediately expressed their concern that the statement was vague and open-ended, and they resented the fact that the industry, which is national in body, gave its promise of item prices to Ontario only." That is signed by Mary Pappert, who was the chairman in charge of consumer pricing.

**Hon. Mr. Drea:** Through all of Canada?

**Mr. Swart:** No, "Our members across Canada immediately expressed their concern that the statement was vague and open-ended."

**Hon. Mr. Drea:** But, Mr. Swart, at the end it says it wasn't in other provinces. Please, Mr. Swart, they don't operate in other provinces.

**Mr. Swart:** It was your statement that was vague and open-ended.

**Hon. Mr. Drea:** Would you please read the last paragraph?

**Mr. Swart:** Sure, I will read the last part—the last part of the sentence, I presume you mean, not the last paragraph. It says, "Our members across Canada immediately expressed their concern that the statement was vague and open-ended, and they resented the fact that the industry, which is national in body, gave its promise of item prices to Ontario only."

**Hon. Mr. Drea:** I think that's a great compliment to the minister. This minister can do more than the other nine ministers in Canada. Why don't you give me some credit instead of doing that stuff?

**Mr. Swart:** You can take it whatever way you want but the concern was it was vague and open-ended. Perhaps what is even more serious, your own food price monitoring in August 1980 showed that the items where

prices had been removed in the supermarkets in 1977 totalled 9.6; July 1980, 11.2; August 1980, 15.1. If that trend continues, we are going to lose them by attrition and not by one fell swoop. They are going to go just the same.

11 a.m.

I have already stated the need for real action and real price protection for the consumer grows greater. We are all aware that, for the last four months, the inflation rate has been a two-digit figure and the projections are that it is going to continue at that high rate for quite a period of time. People are being hurt by this.

We must be aware, too, that profits have soared. The increase was 18 per cent in 1977, 26 per cent in 1978, 42 per cent in 1979. They can only come from one place and that is high prices. That is the only place they can come from. During the first quarter of 1980 they were up another 50 per cent. They were down four per cent in the second quarter but, altogether this year, for the first half, they were up some 17 per cent. They are probably being caught in their own net because of consumer resistance and their profits are falling off.

I could quote here but I will not take the time to do it. There are the profits of George Weston, which controls much of our economy in this country, as well as Dominion Stores profits, General Foods' profits and the profits of many of the other major corporations producing and dealing with consumer items.

We recognize, I think, that average income has not kept pace with rising prices. Statistics Canada shows there was a three per cent drop last year. Average incomes—

**Hon. Mr. Drea:** Ontario or Canada?

**Mr. Swart:** In Canada. Average incomes went up three per cent less than consumer prices. The year before it had been two per cent.

**The Acting Chairman:** I do not want to interrupt you but, since you are dealing with the ministry responsible for Ontario, I wonder if you could bring your facts into relationship with the Ontario scene. I know it is difficult if you relate it to national figures.

**Mr. Swart:** Of course, as you know, Madam Chairman, most statistics are given for Canada and most of them are not broken down according to provinces.

**The Acting Chairman:** I know that.

**Mr. Swart:** They may not apply totally to this province, but they do in general. When one is dealing with profits, the corporations

overlap provincial boundaries, as you are aware.

**The Acting Chairman:** I know.

**Mr. Swart:** You just cannot segregate them.

**The Acting Chairman:** It is just an admonishment, sir. I am not trying to stop you.

**Mr. Swart:** The most serious part is that it is low-income people who are getting hurt the most on this issue, first, because they spend a higher proportion of their income on food and increases in food have been higher than the average increase in consumer prices and, second, because the gap between the poor and the wealthy in our nation has been widening. Those on lower incomes have not been receiving even the same percentage of increase as those on higher incomes.

This is certainly true with regard to the minimum wage. It is a rather classic example, particularly in this province. I will deal with it in this province, Madam Chairman.

Those who are on the minimum wage, and a large percentage of the people in this province are, had a minimum wage in 1976 of \$2.65 an hour, in 1978 of \$2.85 an hour, in January 1979 of \$3 an hour. That is where it rests at the present time. From August 1978 there has been an increase of about five and a half percent in the minimum wage, while the consumer price index has increased more than 19 per cent.

If one goes back to 1976, it is still only about a 12 per cent increase, while the cost of living has gone up some 35 per cent in that time.

I have here a statement by Statistics Canada, taken from a Toronto Star article of January 3, 1980, headed, "Rich Get Richer—StatsCan."

"The gap in the distribution of wealth has widened, despite talks about distributing incomes more fairly and the introduction of social welfare programs since the 1960s, Statistics Canada says." It goes on to give some of the details of this, which I will not take time to read at this time.

The family benefits of the Ontario government show the same sort of pattern, perhaps even more so. They have not, in any way, kept up with the increase in the cost of living. People in the lower-income groups are being hit hard by inflation, particularly by escalating food prices.

Another reason why we desperately need some intervention by governments, both federal and provincial, in this whole matter of prices is the ever-increasing concentration of power in a few corporations in this country.

I have here an article from the Toronto Star, dated April 21, 1980, by Mr. W. T. Stanbury, in which he deals with this issue. He talks about mergers, which have gone up "from 296 in 1974, to 398 in 1977, to 449 in 1978, to 511 in 1979." He goes on, to make this statement:

"Mergers that increase concentration in one or more markets reduce the number of competitors and increase the remaining firms' discretion over their pricing and product strategies. Decisions affecting tens of thousands of employees and consumers are made by a mere handful of executives. As the intensity of competition decreases, the pressure to be efficient is also reduced. As Nobel laureate Sir John Hicks said 40 years ago, 'The best of all monopoly profits is a quiet life'."

I have here some documentation which was done in the United States with regard to the effect upon prices when there is a concentration of one product in a very few firms.

In 1966 the United States National Commission on Food Marketing, as yet the most comprehensive investigation of the food industry in North America, concluded: "In most industries gross profit margins of larger firms have grown more rapidly than those of smaller firms. Profit rates of larger firms are considerably higher than those of other industry members and the industry average. The larger firms exhibit greater stability in rate of profit than do firms in the other asset-size groups, and these trends seem to be most pronounced in areas of higher concentration and increasing product differentiation."

It states, "When a few large firms dominate a field, they frequently forbear from competing actively by price; competition by advertising, sales promotion, and other selling efforts almost always increase and market power inescapably at the disposal of such firms may be used to impose onerous terms upon suppliers or customers."

A US Federal Trade Commission staff document which tried to assess consumer loss as a result of monopoly pricing, estimated, "United States consumers are overcharged \$2.1 billion in 13 food industries." Food monopolies, therefore, are costing us money.

Another analysis points out that "Three independent methodological approaches and data sets" were used "to estimate the consumer loss due to monopoly in the United States' food manufacturing industry for 1975." All three estimates converged to the \$12 billion to \$14 billion range. That is what it is costing American consumers because of

monopoly or near monopoly control in the United States.

If we extrapolate that to our Canadian system, and the concentration is even higher here than it is in the United States, there is an overcharge of between \$500 million and \$825 million yearly, which adds up to about \$400 per family, because of monopoly control in this province.

11:10 a.m.

I have a great deal more documentation here, but I am not going to read it at the present time because of time constraints. I would be glad to supply it to the minister or his staff if they would like to have it. It includes some of these documents from the United States and the newspaper articles.

**Hon. Mr. Drea:** If it is Canadian, I would be delighted.

**Mr. Swart:** We have not done any similar studies in this country unfortunately.

The minister, in this whole matter of monopoly, has kept a hands-off policy. From October 8 to 10 there was a meeting, in Saskatoon, of the ministers of consumer affairs of the various provinces with the federal Minister of Consumer and Corporate Affairs, Mr. Ouellet. The meeting was called by Mr. Ouellet to deal with the matter of weak competition in big business.

On October 10 I asked the minister in the House, on a supplementary, what input his government made to the meeting and what new measures he intended to institute to give some price protection to the consumer, since his government has constitutional control over retail prices. He replied: "Obviously the honourable member is confused. There is a federal-provincial meeting of consumer ministers now under way in Saskatoon . . . I have people out there, and I will find out when they come back, but to the best of my knowledge the matters that the honourable member is talking about were not on the agenda for this meeting."

I talked this morning with Mr. Jean Gariepy of the federal minister's office, who was at that meeting. He told me that competition policy was a main topic of discussion at that annual conference of the ministers, and that Mr. Ouellet promised to have new competition legislation in place by the end of 1981. So it was a main item of discussion there according to—

**Hon. Mr. Drea:** Mr. Swart, I am informed by my own staff—

**The Acting Chairman:** Excuse me, Mr. Minister. I am trying to be fair. I have to be able to allow the minister to reply and

then we have to hear from Mr. McGuigan. So I think if the minister would hold his comments until his turn for a reply we can get through it fairly. I do not know whether there is anything from the Tories other than the minister.

**Mr. Swart:** Madam Chairman, any time that you think my time is up, in fairness I would be willing to quit at that point, and if there is any time left of the three hours I can proceed. I leave this in your hands, but perhaps I could just sum up this part with regard to monopolies. I have only about 15 minutes left, Madam Chairman, if you would like me to finish, I am in your hands.

**The Acting Chairman:** I think it would be advisable for you to finish. I am just trying to work out the time.

**Mr. Swart:** I wanted to say that these factors with regard to monopoly control and the others that I have raised are factors we cannot ignore. I say to the minister that the net result of his involvement in pricing has been negative; that people are being hurt and those on low incomes are being hurt substantially; and that the growing concentration of corporate control is limiting competition and increasing prices.

Let there be no mistake, people are concerned about it and they want government intervention. In a Gallup poll of July 26, 1979, the direct question was asked, "Would you favour or oppose the imposition of price controls and wage controls by the federal government?" The Gallup poll shows that 66 per cent were in favour of price controls and 51 per cent in favour of wage controls. Two thirds of the population are in favour of some form of price controls. The poll did not specify either comprehensive or ad hoc price controls.

Another poll was done with regard to inflation about August 10 of this year. It asked, "What do you think is the most important problem facing this country today?" Forty-eight per cent of the respondents, nationally, chose inflation. Next was unemployment with 16 per cent. There is no question that this is of concern to the people of this nation and certainly of this province. They even have it for Ontario and it is 48 per cent for Ontario.

**The Acting Chairman:** I would like to ask you, if you would, to identify the polls and what the source was for the benefit of the committee.

**Mr. Swart:** They are both Gallup polls and the last one I quoted shows 48 per cent



inflation is a top problem and that is true for both the Canada average and Ontario. The Canadian Institute for Economic Policy, which is a fairly substantial organization, has come out strongly in support of ad hoc price controls.

I did a survey in my own constituency last fall and asked a question, "Do you support a prices review board with power to investigate and roll back unjustified price increases?" Out of 742 replies, "yes" was 96 per cent, "no" was 3.2 per cent, "undecided" was 0.7 per cent. That may not be entirely accurate but it certainly conforms even with the Gallup polls. Other members have also put that question on constituency leaflets and they get a very, high return of positives.

There is no question about it, the majority of people in this province and in this nation want some form of price control, not necessarily comprehensive control, but price intervention.

I had a request a few weeks ago from a consumers' association for copies of the four private member's bills which I had submitted to this House. I have a letter signed by Mrs. Helen R. Anderson, co-chairman of the economic policy committee of the Consumers' Association of Canada. The letter is dated October 15. I will read the first paragraph and there are no qualifications afterwards; it just deals with other subjects. "Thank you very much for sending me copies of the four consumer protection bills you introduced in March. If only there was some possibility that they would pass into law some day."

So there is no question that there is widespread support out there for intervention into the marketplace, where consumers are not being protected, to ensure that they get the protection.

Finally, I just want to say I recognize that much of the power and the responsibility rests with the federal government, but I remind the minister, that he does have power over retailers.

The provincial government does have power over retail prices or can have power over retail prices. In the letter the minister received from Mr. McMurtry there is no question about this. It is dated December 18, 1979. "So long as it did not purport to regulate interprovincial or international trade to conflict with valid federal legislation in relation to the same matter, it would be within the competence of the Legislative Assembly to authorize the Minister of Consumer and Commercial Relations to regulate, control or roll back prices in the province

of Ontario." There is no question you have that power if you want to use it.

You can also, of course, make representation to the federal government on these matters, whether it is on monopoly control or some other form of ensuring some sort of price protection. Some ad hoc price control is really not so radical. After all, we have price control with our rent review. That is a very essential commodity to the consumers and your government brought that in. I realize it was with a lot of prodding and some threats, but it was your government that brought it in.

**The Acting Chairman:** I wonder if you could wind up, in fairness to the minister's reply.

**Mr. Swart:** Yes. I am calling on the minister really to do two things. One is to pass legislation, such as my four bills, but particularly the Fair Pricing Act which requires that anybody shall—

**Hon. Mr. Drea:** The answer to that is no.

**The Acting Chairman:** Please, Mr. Minister.

**Hon. Mr. Drea:** I do not like being hustled by a private member about his bills, Madam Chairman.

**The Acting Chairman:** You can reply to that when your turn comes.

**Mr. Swart:** Those bills are reasonable. As I have pointed out, the Consumers Association of Canada is anxious that they be passed. I might ask also that along with this you establish a special fair prices division in your ministry.

11:20 a.m.

As I said at the beginning, the matter of consumer prices must become a major part of your portfolio. There are other measures to be taken by other ministries which also have a responsibility in consumer pricing. Certainly Agriculture and Food with regard to their policies; Industry and Tourism, with regard to self-sufficiency; and of course the federal government has the major responsibility. But you have the power of direct intervention. You can demonstrate a real concern and direct action, and I call on you to use that power for the benefit of Ontario consumers.

**Hon. Mr. Drea:** Madam Chairman, after 68 minutes, in fairness to the acting critic of the Liberal Party, I am going to rather—

**The Acting Chairman:** He is the critic.

**Hon. Mr. Drea:** Today, the acting critic.

**The Acting Chairman:** I'm sorry. For CCR; I meant in this area.



**Hon. Mr. Drea:** No. Mr. McGuigan is substituting for Mr. Breithaupt today, and I want to particularly recognize the fact that he is the critic for the party. So I am interested in any dialogue with him, not only because he is the critic, but as a producer; other than in his legislative career, Mr. McGuigan is a producer, so I will make every effort, Madam Chairman, to prioritize all of these things.

First of all I want to say to Mr. Swart that I will stand by everything that has been put out over my signature in those letters that were drafted. Mr. Swart, I am told that our calculation on that Miracle Whip is correct. We will get the calculation if you are curious about it, and I will file it at another time.

I want to deal first of all with a number of topics. I must say that I am rather amazed. I thought this was going to be on food prices. So far it has been just a dreary repetition of a great number of things that have gone on in the past. And I feel that the whole question of food prices, where we are going in this country, not only from a consumer's point of view, but, even more essential, from a producer's point of view, a processor's point of view, and a retailing point of view, would have been paramount.

One concern I have is this constant use of American statistics. One of the things I have done in this ministry has been not only to get rid of the entire dependence upon American studies, but also of all Canadian. We have broken it down for the province of Ontario.

I am not disputing Statistics Canada and the very excellent work that the federal government does, but it is a coast-to-coast operation, and I think that if they can do that job on a coast-to-coast scope, taking into account the 10 provinces and the territories, and having to strike mean averages, it is incumbent upon a provincial ministry to break down Ontario, to produce Ontario figures—to even do it by regions in Ontario, and I am not just talking about north, south, and so forth. That was the whole purpose in the food monitoring field we went into.

As a matter of fact, many of the things we are doing in this province, and some of the things that are very operative in the food retailing, or in the processing, or in the producer areas, are not applicable in any way, shape or form to the United States.

I totally disregard any American study as having an instant impact. It may, in some areas, give you an idea that you should look here, but the definitive has to be Ontario. I am not running a branch office of some American outfit in either California or Wash-

ington. I want to make that very plain. The world has changed a lot since 1966 or whenever those stats were from.

**Mr. Swart:** Too bad you don't recognize it in your policies.

**Hon. Mr. Drea:** As a matter of fact, Mr. Swart, your union friends from the supermarket industry who came in to see me tell me that is not the case. They are now telling me that the edge is against the big companies and they are profoundly concerned. They say there are only two types of supermarkets now, the unionized and the nonunionized, not chains or anything else. And those are the people from the industry, the union people from the industry.

This is not Loblaws, or A and P, or one other supermarket coming in and saying, "Hey, we haven't got enough of a slice of the action." This is the particular union out there which says: "Mr. Minister, you've got to change your attitude about big chain stores. They don't have an edge any more. They are not big. There are only two kinds of stores, union and nonunion." And they will give you some pretty startling figures. I suggest you might consult with them on this monopoly business.

Secondly, with regard to the conference in Saskatoon, I want to make this very plain. I would have gone to that conference, except, number one, when this Legislature was reconvening the decision was made by this committee, Madam Chairman, not by the minister, that on the first Wednesday after we reconvened, which was the time of that ministers' conference, my estimates would start.

I make no apologies for the fact that when my estimates are on I consider that to be the priority. Subsequently, these estimates, because of other decisions by the committee—and quite properly so—were put down to here. At the same time there was a decision by the three House leaders that legislation, in my name, would be called.

As a minister of the crown in Ontario, and on behalf of the orderly work of this Legislature, I think I have no alternative but to make that a priority. I did not go. I just do not want some snide remarks six months from now, and I'm putting this on the record, I don't want some snide remarks that I was not interested enough to go.

**Mr. Swart:** But you are not going. There was no input on the very important item of monopolies from your ministry.

**Hon. Mr. Drea:** I am coming to that. We were not asked for any input. That was not

a discussion matter. Mr. Ouellet came to that conference and made an announcement. The competition act is solely within the jurisdiction of the federal minister. It has been for some time.

Mr. Ouellet, I am informed, came and made his announcement. According to my people who were there, and they were very senior officials, the bulk of the work involving consumers dealt with the problems the federal government has with insulation and the CHIP program.

Mr. Swart, at no time that I have been the minister, and to the best of my knowledge going back through Mr. Grossman and Mr. Handleman's time, has the federal government ever asked us for any input on what they intended to do in the area of the competition act.

From time to time there have been representations by this government. There were representations, particularly in the time of Mr. Handleman, when that bill was being relatively actively debated. That input was totally ignored by the federal government. When they do develop the bill, Mr. Swart, if they do—it is almost as old as the Bank Act and that is not proceeding very quickly, neither is the Bankruptcy Act. I have commitments on my desk—they were going to have the Bankruptcy Act four months ago; done.

At the time the competition act is unveiled, we will use every possible opportunity for input. But right now, I could send Mr. Ouellet all of the input I want, and it will be in the round file. So that should clear up that little matter.

I don't fault Mr. Ouellet for that, but somehow there isn't the cozy relationship that you see between the federal ministry and this ministry. When Mr. Ouellet moved in the Royal Trust thing, he did not consult with this ministry. He decided to do it his own way. He got himself into a lot of trouble and it was this minister who arranged an accommodation so that there would be an orderly process in the matter. So I will leave that point.

I want to come to some very important things in the area of food, and they have very little to do with—And I will stand by everything, and I don't care what your objections are. If you disagree with the findings that come out over my signature, I will stand by them. I have a very distinguished economist to my left, Mrs. Dagmar Staff. We have other very competent economists in the ministry. Those are the reports and I will stand

by them. If you don't like the findings, well, that's the way it goes.

I want to come to some of the really gut issues that are facing people in the area of food prices. I will file all of these because they are somewhat detailed and exhaustive. I will just try to pick on the highlights. If people have questions, I will go into it. I will file these with the committee for those who may want to go into it.

11:30 a.m.

Based on Statistics Canada figures there is no question the food and beverage industry, and this includes processors, is in considerable difficulty and is facing rather immense challenges which are going to be reflected in the prices we pay.

First, while their sales reached a new high of \$25.4 billion in 1979, a 15.75 per cent increase over 1978, when one starts taking in inflation that is a very artificial figure.

There is consolidation in the industry. It has gone from 7,715 establishments in 1961 to 4,175 in 1979. Since the early 1960s the costs of materials and supplies have consistently represented about 66 per cent of the factory sales performance.

When we look at the cost of materials and supplies and their value of shipments, the major implication is the industry has been unable to build into selling prices the full impact of increasing costs falling outside the material supply area. These factors include interest rates, labour costs, handling and distribution expense, and capital maintenance. These costs have contributed to the depressed productivity levels experienced in the industry. The 1979 report of the federal food and beverage industry task force reported that productivity levels in the total Canadian food and beverage sector measured about 70 per cent of the level in the United States industry.

A deterioration in overall industry profit has resulted, with profits of \$809 million. Statistics Canada reported for 1979 an increase of 9.5 per cent over 1978, well below the 13.1 per cent food price inflation figure for 1979. The after-tax profit level per dollar of sales dropped from 3.12 cents in 1978 to 3.04 cents in 1979. Bear in mind the eight, nine, 10, 11 per cent inflation factor, whichever one wants to go on; I'm not going to quibble.

The forecast of the federal Department of Agriculture predicted retail food prices would increase in 1980 by 10 to 12 per cent. The Retail Council of Canada, representing the sellers, saw a steeper increase; between 11.5 and 13.5 per cent.

These estimates were influenced by three major factors: first, the increasing cost of processing—I have already told you why the cost of processing has to go up—second, packaging; and third, energy.

Bear in mind this compilation was done before the pricing increases announced in the federal budget last night. I will not go into the merits or demerits of that. The fact of the matter is energy in the next two years is going to cost significantly more.

One problem in this area is that one type of product which has held down the cost of food overall has been canned vegetables. Those days are over. There have been not one, not two, but three price increases in the cans. We are talking about the raw material. Whether they stamp their own cans or buy the finished cans to put the product into, there have been three significant increases since January 1980. With steel prices forecast to go up again, it will not be long until there is a fourth.

I take you back to the fact the industry here, on a general average, is only 70 per cent as efficient compared to that in the United States. Obviously the processors, particularly in the canned vegetable field, are not in a position to absorb those continuing material costs.

First, the cost of canned vegetables is going to rise. Secondly, I think we have to bear in mind that 1980 has been absolutely dismal. I am sure the Liberal critic, Mr. McGuigan, can give more eloquent testimony than I to the matter of weather conditions in North America. We have to look at sourcing in all of North America because of distribution and, particularly, the buying habits of the Ontario consumer.

First, there was a dreadful drought in the United States which achieved a great deal of notoriety. This is contributing, no end, to the rapid increase in the prices of meats and that impact will continue to be felt for many more months.

Secondly, there has been, though not as publicized, a second drought throughout most of the continental United States in the major growing areas for vegetables and so forth.

Thirdly, at the same time, in Ontario, the prime producer of fresh produce for all of Canada, it has been exactly the reverse. In the last three months there has been extraordinarily wet weather. It has already had a tremendous impact on the potato crop. It has already impacted heavily on the carrot crop.

What this basically means is the Americans, who have suffered enormously, are buying vegetables. They have to buy them. They operate with a 15 per cent break when they come into this market. If there was an overabundance of supply, I would say: "Thank God, because the Ontario farmer will be getting something out of this. Lord knows, he deserves it. He has had bad weather, too, and there is really not a market situation that can affect him." Unfortunately, the wet weather this fall has narrowed his yields enormously. There is intense competition, even for the product that is going into the can. Prices are already rising.

I wish I could give you a better forecast in the short run but I would be less than honest if I did. When I talk about the short run, what I have to look at next year is that the climate will return to relative normalcy. In other words, there will not be drought or wet weather in certain parts of the country, and so forth. I guess as best in the agricultural community, it could be defined as a normal year.

In the field of processing they are trying to develop new and more economical processing techniques. That is the major industry goal. Some of the priority items which require new technology and are being tested now are fabricated foods. We are talking about such matters as using soybeans as a replacement for beef and other things where—vegetable product would be the best description, I guess, Mr. McGuigan—vegetable product is used as a substitute.

**Mr. McGuigan:** Analogues.

**Hon. Mr. Drea:** Fabricated foods; not very appetizing but I guess it describes it. It is called man-made, I guess, or factory-made. I do not know.

Next, a lot of work is being done to try to produce better septic packaging. In other words, there will not be the loss from wastage in the stores.

Further, the central cutting and packaging of meats: The field of packaging itself has a major impact upon food prices. About one third of the \$4.2 billion that will be laid out for packaging and packaging materials for all of Canada is going to be in the food industry this year. Those prices are rising.

11:40 a.m.

They are trying, in terms of technology, to develop more flexible pouches, thermoformed containers, ovenable paperboard, two-piece drawn metal containers. A continuing trend is the replacement of paper by plastic materials in food applications because of



properties in coatings that can be built in or applied to plastics.

Energy is a very difficult area. The food and beverage industry is the fourth highest energy-using industry in Canada. To give you a comparison of what that means, the top three are (1) pulp and paper, (2) primary metals, (3) chemicals. When one gets into the movement of food or the actual production of food in all its dimensions being number four, that gives an indication of what inevitably rising energy costs are going to do.

Just to go through—

**Mr. Swart:** But would not a major part, or at least the dominant part of that, be on the farm in actual energy consumption?

**Hon. Mr. Drea:** No, sir.

**Mr. McGuigan:** Three to five.

**Hon. Mr. Drea:** When one looks at packaging, one is looking at very specialized types of packaging and so on. These are very high energy users. I am not saying in terms of volume the food industry uses a quarter of all packaging produced. In terms of the energy required to produce what they use, that industry is number four.

As to specific industry outlooks, in the meat industry beef sales were down 12 per cent in 1979 because the beef cattlemen were attempting to rebuild their beef herds, which had been devastated by western droughts in 1978 and 1979. There was a western drought of enormous proportions this year and, furthermore, the one in the United States was far more substantial. There is a free movement of cattle on the hoof over the border. The cattleman in the west, and there is a reflection because of the cattle producer in the east, simply is not going to have time to rebuild the herds. He is facing higher feed costs, et cetera. One starts slaughtering the beef because one cannot afford to keep it economically. It stabilizes the price but then one gets into next year when there is no more beef.

In poultry processing, sales are up 18 per cent over 1978 and the reason is the demand for poultry products will continue as long as red meats and fishery products are getting premium prices. But the droughts, particularly in the southern United States, had a horrible impact upon their flocks. They are replenishing their flocks in the United States. They are buying birds from here. The same impact as in the vegetable field is particularly apropos in all forms of poultry.

There is no flock. The chickens died. One has to replace them. How are they going to

replace them? It takes time to grow a chicken. One comes to Canada to some place where there was no drought and one will pay anything to get one's flocks back. There are only so many birds to go around.

The baking and biscuit industry had a 16 per cent gain in sales over 1978. One of the difficulties is that bread continues to be used as a loss leader. You have seen bakeries going under. The other difficulty is that, to give the farmer a fair share, the federal government is upping the price to the millers for flour and so forth. This passes right on through.

It would be nice for the minister in Ontario to say the baking, bread and biscuit industry is very essential at home, so the federal government should not increase the price to the millers for the flour. That would be just great. I do not have to go out and look honestly at the situation in Manitoba, Saskatchewan and Alberta where the grain grower is facing the same energy costs, the same inflation costs and everything else. One cannot do that.

With fruit and vegetables, there was only a 10.6 per cent increase over 1978 for 1979 which is consistent with 1977-78 comparisons, but the total Canadian fruit production in 1979—this is production, not sales—was down almost 4.5 per cent. I am sure, Mr. Swart, you would be aware of this, coming from where you do.

What is happening? It is the rise in imports of processed food and vegetables. Remember, we are one-third less productive in our can processing industry than the United States and then there is the increasing flow of fresh fruit and vegetables coming into Canada duty free during the off season. There is no way we are going to turn back the clock to eat cabbage or carrots during the winter time because lettuce and celery are summer and fall products. People have been tuned into the vast production of California, Arizona, southern Texas and southern Florida.

Bear in mind, too, energy costs are going up in the United States, particularly regarding transportation. The cheap truck ride for fresh lettuce from Florida or the three and a half days from Arizona at rock bottom prices is over for ever. I could go on with the confectionery industry and so on. I wish I could give you a much nicer outlook that after two or three months things are going to come back. They are not. I do not know when they will come back based upon supply and demand because I do not control the weather.

In 1979, just before the very dismal year of 1980 weatherwise, there was the feeling that with better yields, with better production and with adjustments in the transporta-



tion system that had come after three years of experience with higher energy costs, we would be coming back relatively to normal. Then we had the worst drought since the dust bowl. In other places it was not very spectacular I admit, but day after day there was very sodden ground and the things that grow in the ground were affected.

There has been mention made here about food profits, about food retailers' financial statements and their analyses of their profits. I will file this, too, Madam Chairman. I will just leave these here and we will put them all together afterwards.

**The Acting Chairman:** Our clerk seems to have disappeared momentarily.

**Hon. Mr. Drea:** He can file these. Let us start with Canada Safeway. Canada Safeway is not a major organization in Ontario. It has 35 stores. I am not disputing it is the major operation west of Ontario or that it may become a much more significant force in the Ontario market than it is today. The company has been expanding.

**Mr. McGuigan:** It is something like two thirds in western Canada.

**Hon. Mr. Drea:** Yes, a very heavy proportion. I suggest it is also becoming a heavy proportion in northern Ontario. It is coming right across and down. In certain areas, there is no question the penetration of the market in Ontario by Canada Safeway has led to lower prices, particularly in the Hamilton area. If we look at food monitoring over the last year you will see that, where Toronto once was the low-priced area, there are now other areas and this is the penetration of a major new competitor into the field.

Their sales increased 17 per cent. This is based upon the year ended December 31, 1978, to December 31, 1979. Their operating income increased 12.8 per cent. Their operating margin declined from 5.6 per cent to 5.5 per cent. Their net earnings from operations after tax went from \$46 million—I am doing this in round numbers—to \$55 million. Before tax, their profit per sales dollar was 4.1 cents in 1978 and 4.1 cents in 1979. After tax, it was 2.3 cents for 1978 and 2.4 cents for 1979. When one builds in the inflation factor, they did not make any money.

11:50 a.m.

**Mr. McGuigan:** Is that Safeway?

**Hon. Mr. Drea:** Safeway, yes.

**Mr. Swart:** That is double what Dominion's and Loblaw's are.

**Hon. Mr. Drea:** I am coming to all of them; I will read them all to you.

**Mr. Swart:** Is that the national picture on all of those?

**Hon. Mr. Drea:** It is consolidated, but I have pointed out to you Safeway is not—I do not mean to diminish the role—the major chain in the province.

**Mr. Swart:** I realize that, but I want to make sure you are giving the national picture and not Ontario's.

**Hon. Mr. Drea:** Yes, I have to. There is no Ontario thing here at all.

For Dominion Stores, where you see March 17, 1979, vis-à-vis March 22, 1980, their sales were up 10.75 per cent. Their operating income increased by 17.8 per cent. Their operating margin for that period in 1979 was three per cent; it went up to 3.2 per cent. Their net earnings from operations before tax went from \$43.7 million to \$51.3 million; after tax it went from \$24 million to \$27.2 million. Per sales dollar: before tax it was \$1.82 per \$100 in 1978; it was \$1.93 in 1979. Their after tax was \$1 per \$100; it went to \$1.02.

For Loblaw's Limited, its sales were up 10.6 per cent. Its operating income was up 31.7 per cent. Its operating margin went from two per cent in the 1978 period to 2.3 per cent in the 1979 period. Its net earnings—and it had some extraordinary items in here—after tax but before extraordinary items, went from \$11.8 million to \$14.8 million. Per sales dollar: it was 0.7 cents per dollar in 1978 and 0.8 cents in 1979; after tax it was 0.4 cents in 1978 and 0.4 cents in 1979.

Steinberg's sales were up 8.1 per cent. I want to caution that part of that reflected the fact they disposed of Cardinal Distributors, which I do not think was in this province. Its operating income increased four per cent. Its operating margin declined. The operating margin in July 1979 was four per cent; in July 1980 it was 3.7 per cent. Its per sales dollar after tax, was 1.01 cents per dollar, and for 1980 was 1.02 cents.

**Mr. McGuigan:** Do you have a return on equity there?

**Hon. Mr. Drea:** No, I do not. I can do it for you if you want. We have some general things, I think, on return on equity. Mrs. Staff may be able to help you with that.

The Oshawa Group, which is Food City and IGA, is a consolidated statement. It also involves Drug City and general merchandise because Towers Department Stores are involved in its statement. Its sales increased 10.4 per cent; its operating income

increased 7.4 per cent; and its operating margin declined from 1979 when it was 2.6 per cent down to 2.4 per cent. Per sales dollar: before taxes, it was 0.9 cents per dollar in 1979 and in 1980 was 0.8 cents; after tax it was 0.6 cents for 1979 and 0.5 cents in 1980. I draw to your attention they are wholesale and retail and they have ancillary things other than food. Since it is a consolidated statement, that is the best I can give you on that matter. I think it is fair to point out that with the Oshawa Group, IGA, et cetera—because this is the question the unions are constantly bringing to my attention—there are only two kinds of stores, union and nonunion; they point that out. Traditionally, we have not put it into the big five because it is somewhat fragmented, but we have this one.

Profits are not in the area that has sometimes been described as excessive and so on. I put that in about the retail industry and its profits and statements. I will file these documents with the committee.

The question was raised before concerning a study done in 1975 and 1976 that was commissioned into the Ministry of Agriculture and Food in 1977. Remarks were made that it is the best one to date. That is not true. I draw your attention to the Royal Commission of Inquiry into Discounting and Allowances in the Food Industry in Ontario. Every member here got one at the same time I did. I have taken out some points. If you want to look in your books, it is pages 167, 168 and 169. I will leave these excerpts with the committee in case there is any concern:

"Conclusions: The following summarizes my conclusions on the evidence examined in this chapter:

"One, all raw milk in Ontario is marketed through the Ontario Milk Marketing Board. This board establishes the price that milk processors are obliged to pay for the purchase of milk. As a result, the fluid milk shipper, the dairy farmer, does not offer rebates to market his product. The number of dairies in Ontario has declined dramatically in the past 15 years as processing has become more centralized. Consumers now purchase their milk mainly from retailers and seldom by way of home delivery. The rebate level on fluid milk offered by processors has increased significantly in the past few years to the point that volume rebate levels in 1979 ranged from five to 30 per cent . . .

"Four, the major reason for the high level of rebates is price competition among the

dairies. An additional reason for the savings is the savings due to large-scale production. Dairies do not cost-justify their levels of rebates due to the expense of such a study.

"Five, a small retailer cannot buy milk as cheaply as a large retailer and consequently is at a disadvantage. Nevertheless, there has been no reduction in the number of outlets where a consumer can purchase milk.

"Six, large retailers sell milk in certain cases at a loss or at a reduced price. Consumers are benefiting from the intense competition at both the processing and retailing levels.

"Seven, a profit and equity survey of the four largest dairies indicates a low profit margin on sales of 1.5 per cent and a reasonable return on equity of 15.5 per cent. Therefore, payment of very high rebates by dairies does not appear to be associated with abnormally low or high profit levels among these processors.

"Eight, I agree with the conclusion in the milk commission report of 1975 that in general the marketing system for fluid milk is relatively efficient, progressive, flexible and equitable. However, I would suggest the milk board should continually monitor the milk industry from dairy farmer to retailer to ensure that no serious aberrations develop."

Mr. Chairman, I have been accused of not looking at reports. I just wanted to read those words that are in point number eight, "in general the marketing system for fluid milk is relatively efficient, progressive, flexible and equitable."

That is this year. I will leave that in case somebody suggests I was reading out of context. It is read verbatim, including a number of things irrelevant to the whole proceeding.

12 noon

Mr. Swart: Could I—

Hon. Mr. Drea: I am not done. Please. You raised a number of points, I have tried to remember them. I am giving you answers. The answers may not be acceptable, but could I please finish with the answers?

Mr. Chairman: Carry on.

Hon. Mr. Drea: There were some letters by the Consumers' Association of Canada read today, at least one, I do believe, on a particular matter. There was a letter from Mrs. Pappert which I presume will be filed. At least it was read into the record. It is dated August 9, 1980, signed by Mary Pappert, Chairman, Consumers' Association of Canada, Computerized Supermarket Committee; just one paragraph.

"Dear Mr. Drea:

"With regard to the interim report on computerized checkout systems in food supermarkets in Ontario released in June 1980, I would like to take this opportunity to thank you on behalf of the Consumers' Association of Canada for the well-documented, complete and unbiased method by which this report was prepared and completed."

Mr. Swart, I must apologize to you. This is not the letter I was trying to get. There are letters from the consumers' association regarding the August 1 prices-on policy by the supermarkets thanking me or complimenting me, and so forth. I am not going to make a big issue out of the letter you read, but I will file with the committee, when I go back to my office, additional letters. Certainly if you wish to challenge the authenticity of those letters from the consumers' association, if you want to make points on it, I am sure we can fit it in at some future time.

In regard to the prices-on, the prices are on. There are nine provinces in this country, nine, which would dearly like to know why there was such a relatively fast solution, without legislation, to a problem that has long perplexed them. Or, in the case of some of the eastern provinces, they were afraid because it was starting to come there.

Those governments are, in one form or other, in consultation with people in my ministry, including Manitoba. That province went to legislation but it had no regulations. Manitoba wants to know how it was accomplished.

I will tell you how it was accomplished. I always keep my word. We said in December 1979, before the Legislature adjourned for the winter, that we were going to do all of the surveys. The Consumers' Association of Canada would do some, the industry would do some, but we would do so as a government. Mr. Swart, you asked if we would include certain things that you had seen in the US, and I do believe we did.

When the Legislature was adjourning—and mind you, it took a little bit longer for that survey, not the government part of it, but we wanted to give everybody an opportunity, because this was the whole consumer area; the consumer was being asked. It took a little bit longer, a month or so, but we announced the results of it just before the House adjourned in June.

I wanted the industry responses because the industry had agreed that the consumer would make the decision. Based upon those surveys, where the consumer made the decision, the industry accepted it.

I believe that is the first time anywhere in North America that the consumer has really decided. I give you the example of all American states that debated this, that passed legislation, revoked legislation, put it in local ordinances or bylaws, brought it back into their legislatures, found they could not cope with it, found that the legislative mechanics were almost impossible, were making life difficult for the consumer.

There is no difficulty for the consumer today in this province, because the consumer was given an opportunity, with the government only co-ordinating. The consumer was given the opportunity and, faced with what the consumer wanted, the industry accepted—not the minister's feelings, not individual members' feelings, not any group's feelings—the industry accepted the individual consumer's preferences and stopped the computerized checkout without prices. And I am going to continue to do that.

I am the first to tell you if, a few years down the road, on the basis of work we do and on the same impartial basis—we will be drawing on everybody, not only the industry and ourselves, but the Consumers' Association of Canada or any other group that feels it wants to take part—if it turns out in the years ahead that for some reason—I do not see it—the consumer wants the prices off, then, Mr. Swart, I will tell you, I do not play God. If the consumers honestly decide, in the future, that they have changed their minds on this whole process or that the process is better, then surely I would think you would say to me, "Mr. Minister, having listened to them in the first place, having produced a vehicle where their wishes could be put into the corporate boardrooms, and those wishes accepted in their entirety, do not change the rules now."

In the consumer field, one of the very bad things that has happened over the past 20 years is that various levels of people, particularly in the legislative field—and I talk of all over North America, all jurisdictions from municipal to provincial to federal in this country—have sat there and told the consumer, "We know what is good for you and therefore we are going to do it this way." That is not the way that we operate. I make no defence of the approach I took. I suggest to you, on the basis of what other governments in this country are doing, that I think that is the real test.

I just want to read from one other study. This is a great study. I take it that the members have read it, or at least have been able to scan it so far. The Royal Commission of Inquiry into Discounting and Allowances in



the Food Industry in Ontario. On page 228, item 11:

"The evidence indicated that Ontario retail chains operate more efficiently, as a whole, than other food chains in North America. This is reflected in the fact that Ontario food prices are the lowest in Canada." If you want studies, I will give you studies.

There was a question raised about the fact that I never produce the comparisons with Detroit. Here they are. We took January 31, 1980; April 30, 1980; and October 24, 1980. We compared that nine-month period. The reason Detroit or the Wayne county area was chosen is that the Buffalo area is a very difficult market to monitor. Wayne county, by pretty common admission, is a relatively static area, as is southern Ontario. The methodology is all here. The report is all here. I would suggest to you, just as a general conclusion—I am not going to read all this, Mr. Chairman, no fear.

Mr. Chairman: What I fear is that Mr. McGuigan will not get his chance.

Hon. Mr. Drea: Mr. McGuigan? Mr. Chairman, I will give him all the time he wants.

When these were drawn, these were questions specifically asked: In that period January 31, 1980; April 30, 1980; October 24, 1980, when you look at the market here, compared to Detroit, it is very interesting because when you take into effect the devaluation of the dollar there really is not much difference. In fact, it has been declining. But, as no one has had the opportunity to read these, I will file this with the committee, and we will continue to do that.

In terms of some fluctuations, I really do not know whether it is possible to do it monthly, but certainly no longer than quarterly. I will try to make it monthly.

Mr. McGuigan: I do not have very many quarrels with the things the minister has said. I would like to point out though that these profit ratios, the return on equity, are not too bad, and I have no quarrel with people making a profit, none at all. They are pretty reasonable.

12:10 p.m.

Mr. Chairman: Mr. McGuigan, I am going to have to ask that you not face the minister but that you face the microphone.

Mr. McGuigan: I had forgotten about that.

The return on equity in farming, traditionally, over the years, is about—

Hon. Mr. Drea: Too low.

Mr. McGuigan: It is about five per cent. But we are compensated by the fact that the land does keep up with inflation. So when you add the two together, the return is not that bad. I wonder, in these return-on-equity figures for the chain stores, whether they include the appreciation of property values. If they do, if there is property value appreciation in there, then they are getting a darned good return.

Hon. Mr. Drea: First of all, Mr. McGuigan, if I can interrupt for a moment, I used the royal commission figure, which was a general average. I did not use a return on equity in any of those detailed ones of the industry.

Mr. McGuigan: I wonder if the economists—

Hon. Mr. Drea: I honestly do not know. Can I take your question under advisement? Perhaps I can use some of the working papers of the royal commission, because they did develop an average and pursue it that way. I honestly do not know the reply to your question.

Mr. McGuigan: I think it is very important when looking at those figures to know whether they are being protected in a large part of their investment through property values.

Hon. Mr. Drea: It depends on whether they own the store or whether they lease it. Obviously, they had two or three years in there and they have developed some general statements, so they must have some working papers.

Mr. McGuigan: It would be interesting to know that. As a matter of fact, I have asked the library people to try and search that out for me.

Hon. Mr. Drea: You should get Mrs. Staff—

Mr. McGuigan: I would like to make some sort of overview comments. You realize I am substituting, and I did not have a chance to get all of the statistics and details Mr. Swart has. I would like to present, as a producer, some of the overviews I have of this food business.

I would point out that the clock really started to run in 1972, and that was the year a major change in policy occurred in the Soviet Union. The Soviet Union has very poor weather. Historically, over the years, whenever they suffered a setback in the weather, they would slaughter their livestock, people would tighten their belts, and it would take several years before they could build up their grain stocks again, and their livestock numbers. But the people advanced



enough technologically to put up the first Sputnik—I think it was 1959 when their first Sputnik went up.

**Hon. Mr. Drea:** They cannot grow corn.

**Mr. McGuigan:** Yes, that is another thing. The ones who were technologically advanced enough to do that, and become a world industrial power, and be in the nuclear age and so on, could not face their people with no protein. So they went into the world market. And they are going to continue to be in the world market.

Since 1972 we have had no surpluses in the market. We are not liable to have surpluses, as far as anyone can possibly see into the future. China is now coming into the market in a very large way, and as you mentioned, there are uncertainties of weather. I have no time to go into that but there is a big picture there.

**Hon. Mr. Drea:** I think it would be fair also to point out that on the replacement of protein, it is almost a three-year cycle from a drought or something unusual.

**Mr. McGuigan:** Yes. With cattle it is 10 years.

**Mr. Swart:** There is a need to preserve our best land too.

**Mr. McGuigan:** Yes, that is part of it too.

Just as an example of the demand for grain, this year in the USSR the target was 215 million metric tonnes. They have come out with something like 180 million.

The best grain lands they have outside of the Ukraine, which is a fairly small part of Russia, compare with the worst grain lands of the United States, which would be North Dakota. So, however we might disagree with their system of farming—and I have great disagreements with it—they also have a very uncertain weather situation. But they have the advantage, in their system, of being able to tell people to go and work in the gold mines. They can direct people to work in the gold mines. They have lots of gold. They are going to continue to buy food with that gold.

The point is there has been a basic, fundamental shift in our food economy. Power has swung to the producer from the consumer who, until 1972, had such a wide choice, with such surpluses overhanging the market, that he could pick and choose and was in a preferred position. It has happened not only in grain, which is the basis of the whole food industry, but it is also happening in minerals and has happened in oil. We have had a fundamental shift and we have not yet learned to adjust to it. We are only

at the point of starting to think about adjusting to it. We saw a little adjustment last night.

Following 1972, there was the Arab-Israeli war in 1973. This pointed out to the Arabs the power they had with oil and the formation of OPEC, the Organization of Petroleum Exporting Countries. Again, power swung to the producer and away from the consumer.

This might seem like an academic exercise and you may wonder what the heck it has to do with food.

**Mr. Swart:** It is important and you are right.

**Mr. McGuigan:** I am sometimes accused of being academic, but that is the way I am.

**Hon. Mr. Drea:** Not by me.

**Mr. McGuigan:** That is just the way I am. You will have to accept me.

The importance of it is these two things are feeding on one another and chasing one another. We have a demand-pull on the part of the world population, with an increasing preference and increasing ability of the world population to buy proteins, which, of course, come from grains. They are at that demand-pull.

We have the cost-push, on the other side, due to oil prices. We are going on one heck of a merry-go-round. I cannot see any possible end to it, even if weather temporarily comes to our rescue and we get some particularly good harvests and so on. We are still not going to change that basic situation.

I am not picking on our neighbour or any particular group for failing to recognize this. We all fail to recognize it. We are all in our own ways trying to make adjustments to go back to the old situation. We want more profits, more wages, more fees, more subsidies and we are trying to adjust to go back to that pre-1972 relationship. I say we will never go back. Those changes are fundamental. They are profound.

As an aside, you can understand some of the western alienation on these matters. They were told prior to 1972 that the world price for grain was \$1.65 a bushel for wheat and that they had to accept that world price. Changes have come about where those people are now in the driver's seat and they say they want the world price. One can understand them, even though the world price, particularly in oil, is manipulated. It is not really a market price. But one can understand some of the alienation.

12:20 p.m.

The connection between these two facts is that food production is almost totally

dependent upon petroleum. We tend to think in terms of the horse and buggy days, but it is totally petroleum today. We can equate one with the other. The on-farm share is between three and five per cent, depending on what set of statistics one cares to look at. The percentage of supplies for processing, transportation and cooling, as you mentioned, runs three to four times higher than that on the farm.

Just to illustrate how petroleum affects it, it provides the motor power for the tractors, the dryers and all that sort of thing, even including the coal that is used for generation of electricity because electricity is used in some of the processing. This is used to mine the potash in western Canada, in Saskatchewan particularly and the phosphate in Florida. It is then used to transport and process those and bring them to the farm.

The third element, nitrogen, that is used in the fertilizer, along with phosphorus and potash, takes enormous quantities of energy to produce. If one could think of nitrogen in terms of drugs, nitrogen is really the mainliner. One gives the plants a shot of nitrogen and they go wild with their production.

**Hon. Mr. Drea:** Not mine.

**Mr. McGuigan:** One really gets dramatic results from nitrogen.

The ammonia that is supplied contains the element hydrogen and that is a stabilizer in the affair. Free nitrogen bursts into flame. Hydrogen has to be there to stabilize it. Hydrogen comes either from fuel or the electrolysis of water which, of course, takes electricity. Enormous quantities of energy go into these things.

We are just chasing our tails. When we raise energy costs, we raise food costs. That creates a demand for wages to compensate and so we go around in a great circle.

If one goes into the pesticides, all are based upon petroleum. Take the great 2,4-D debate. Just to show the importance of these pesticides, I worked this out on the back of an envelope and updated it last night. We have approximately two million acres of corn in Ontario. To hand hoe that, to go back to the old days of knocking the weeds out by hand, means doing it twice, without herbicides. That is the equivalent of four million acres.

A hard-working person, putting in a real hard day's work, could do about half an acre a day. That makes eight million man-days that would be required to hoe the corn crop. If no working was allowed on Saturday and Sunday and there was only one day of rain—one would come up with one day of

rain each week when the ground was too wet—that is two weeks of two million man-days. It is totally impossible for the work force of Ontario.

That is just one crop. We have all the other crops. Without working it out, it would probably take all the people in Ontario working for a short period of time to do this. Without pursuing this further, one gets the picture of cost-push pressures due to petroleum prices. They are going to continue to inflate food prices as fast or faster than general inflation. It has been going around 14 per cent; inflation is about 10 per cent. It's an unending spiral. I would like to offer a few possible ways out of this petroleum-induced cost-push spiral.

This is kind of a wild, outside idea, but I will present it for your consideration. It would be to price gasoline at the pump to the motorist at a price that would really affect the conservation motive. I am not talking about 18 cents a gallon, but about something that would really bring about conservation, because we have not done much of that so far in Canada and our petroleum consumption is still going up.

The Americans' petroleum consumption is going down with their higher prices. The recession may have an influence there but, nevertheless, they are going down and we are going up. There would be a side benefit of forcing Canadians to junk their old gas buggies and buy the fuel efficient machines coming off the assembly lines, putting workers back to work now.

The moneys generated could be used for investment for the petroleum industry and for alternative energy supplies. The price of petroleum to all primary industries, specifically agriculture, probably including forestry, could be kept low enough to keep the price of food down. In other words, keep the price of food out of that spiral as much as is possible.

As you know the demand for food is, in economic terms, inelastic. People don't eat more of it because it is cheap. Our stomachs only have a certain capacity, although it is not totally inelastic. But food consumption is relatively inelastic to price, whereas gasoline consumption is not inelastic to price.

I think there is an opportunity in discussing this within your government and with the federal people. Perhaps you could take a look at that concept.

I wish to say I am still enough of a free enterpriser that I don't want to see another Food Prices Review Board or some body that has to justify prices and all that sort of

thing. I think some of the studies you are doing in your monitoring in some ways may have served some of their purposes. They have established a lot of patterns.

Perhaps you could redirect some of that effort to other areas. I think you should put some ongoing studies into the system of food pricing to see if there are not areas where this price spiral can perhaps be, not broken, but at least mitigated. In the price spiral such as we now are and will continue to be in, I question the system of retailing markups based on a constant or rising percentage markup.

There is a built-in benefit to people who are working on a constant markup and working in rising prices. As the base prices rise, and as primary producers on average receive only about 38 per cent of the food dollar, it follows that the fixed percentage is going to generate higher retail prices.

There is another way of measuring performance, say in the meat department or the grocery department, other than markup, which is one of their primary ways of measuring: That is simply on the net profit of that department. In many cases, by lowering the price to the consumer one draws in more traffic and, in spite of what I said about elasticity, there is a little bit of elasticity in the system. Mr. Swart mentioned that. The people on the lower income scale who in many cases are suffering from poor nutrition and bad food habits and not enough protein in their diets, particularly young people and particularly old people; those are the ones where there is some opportunity for a store to increase its volume. If economic theory translates into economic reality, it brings more people into the market.

12:30 p.m.

The food stores have another method of measuring performance; that is, so many dollars of sales per hour of employees' time. In the food industry, this runs to something like \$100 an hour according to the last figure I saw. Every time the butcher department or the produce department meets its target, they simply raise it another \$10. They go in \$10 jumps. It is something that is easily measured; it is a performance they can watch.

You can see these two policies reinforce each other. It encourages the produce operator, the meat operator to give greater prominence to the higher priced item, give it better aisle space, and so on, to increase his dollar volume. I think these two policies are contributing to the high cost of food.

I would like to see your ministry do some studies in this regard and get away from these American statistics; put something in there on Ontario; and see whether or not, perhaps in consultation—I really like the idea of consultation with the industry—some of these things can be pointed out to them. Perhaps they can be influenced.

In his report, Judge Leach alludes to this when he suggests there should be an ombudsman in the food industry. It seems to me your ministry could provide some of the backup and some of the basic information that we really need.

In recent years the management of the chain stores has gone to the masters of business administration and to the computer experts. These people pretty well determine, "This is the way to make money, so this is the way we are going to operate." I rather think that it is working against the home-grown produce item.

I could take you back to a product that I have grown all my life: strawberries. We have it in the retail stores in Ontario for only about four weeks. In fact, in any individual locality where strawberries are produced, it is three weeks. But with the changes in producing areas, we get about four weeks. As far as a store is concerned though, the strawberry season starts about February and runs to around Christmastime, because they are able to bring them in from California and Mexico. They take a fixed percentage, a good percentage markup on these. It is not a great volume at any one time.

When they come to that three-week period when we have a big volume of Ontario strawberries, in times past they would lower the markup and they would feature these things. They would really put a drive on to sell Ontario strawberries. They don't do that now. They just say: "Ontario strawberries have to draw the same percentage markup as Californian and Mexican berries. That is what our computers tell us; that is the way to make money; and that is the way we are going to run our business."

You cannot blame them, but in my opinion it is hurting Ontario pride. Witness the fact that today we are actually growing twice as many strawberries as we were 10 years ago but 80 per cent of those are sold at the pick-your-own level, where people are able to bypass a great deal of these high costs. Yet, in the cities, there are a number of people, particularly older people, who cannot go out and pick their own strawberries.

We need some pressure to feature the Ontario product when it is available. The



total net to the chain need not go down. The actual dollars they get out of the crop does not necessarily need to be less. It would simply mean they were doing more handling.

I think you can follow that through with a number of other Ontario items, but we do not have data to show whether they are taking higher markups, the same markups or lower markups on imported versus local grown. I would like to see that.

There were some studies in the States, years ago that I was cognizant of. They showed bananas versus apples. Bananas had a very low markup; apples had a high one. If that were to apply in Canada, then you would have that working in favour of bananas and imported products against locally grown apples. But we do not have those figures.

Transportation is another area where I think we can help break this cycle. I know the Chairman is very interested in this subject. I do not pretend to be an expert; I know he is. I would not like to see deregulation of our trucking industry. I do not want to see it go back to chaos but I think we could have some reregulation that would lower the transportation costs and other cost items that go into the cost of food. For instance, from Chatham, which is a centre of soybeans, trucks are taking bulk loads of soybeans to Toronto. In most cases they run back empty. They wave across the road, to the other side of the 401, to the people, probably in the same company, who are taking empty trucks to Toronto to pick up fertilizer, lime, et cetera, to haul back to Chatham, which is the centre of a major agricultural producing area.

There are opportunities to allow the broadening of licences in order to do away with some of that dead-heading without, at the same time, throwing the industry into chaos.

**Mr. Chairman:** I think if you check, Mr. McGuigan, you will find the carrier that has authority to carry an agricultural product on his front haul can carry an agricultural product on his back haul; namely, fertilizer, tractors farming implements and so forth. A lot of farmers and some of the smaller companies that are servicing that industry do not realize they have the authority. I know a lot of them are not using what they can use.

It might be that the Ministry of Transportation and Communications should turn out some publication that will at least advise people of some of the opportunities they

have in this respect, because they have more opportunities than farmers think they have.

**Mr. McGuigan:** I am very pleased to hear that. It sounds like a good suggestion.

Beyond that, there are even opportunities for a low-class carrier—and I do not know about the A, B, C sort of licences.

**Hon. Mr. Drea:** You mean alphabetical, of course.

**Mr. McGuigan:** There are so many classes.

**Hon. Mr. Drea:** But I don't think you really want to say low class—I know what you mean. I just don't want some researcher five years from now pondering over this.

**Mr. McGuigan:** Bulk carriers.

12:40 p.m.

**Mr. Chairman:** Those with less operating authority than others.

**Mr. McGuigan:** I think that some of them could even be allowed to bring the higher-priced items on the return trip if it was limited to a certain percentage of their trips.

For example, for 25 per cent of their trips they could bring some higher-priced goods back, and their pickup would have to be limited to within a certain area. Say, a truck coming from Chatham to Toronto could not drive on empty to Kingston to pick up a load to bring back to Chatham, but they could perhaps pick up a load in Toronto with the end run in Toronto.

We simply cannot afford to waste this fuel and cannot afford the extra costs. That is another area where I think we could make some savings in the cost of food.

To go back to retailing, and this is going to be more important as our population ages. I think the people over 65 are eight to nine per cent of the population now and that is expected to go to 13 per cent within 15 years. These people are increasingly discriminated against when they shop in small quantities. They want one or two apples, a couple of bananas, and they need this as part of their diet.

I really had this brought home to me about five years ago when I was guest speaker at the Faculty Club of the University of Toronto and I was talking about food prices. There was an elderly gentleman, a retired professor, probably about 75, and he really became furious. I wondered whether I was going to get out of there with my hide or not. He became furious about the costs of the small items he picked up as a consumer.

I think we need to bring to the attention of the retailers, perhaps just as a public



service, a social responsibility, that they have to price these smaller amounts at a more reasonable markup. They mark up those things at a minimum of 100 per cent. They are often higher than 100 per cent when you buy a single item. We will be in that age bracket ourselves not too long in the future.

There is another area I could mention and that is that Canada and Ontario have the highest quality standards in the world for our food; we are really tops. It was based on the philosophy that when we have surpluses in this country we could somewhat limit the amounts that hit the market by setting very high quality standards. I am beginning to wonder sometimes if some of our quality standards are not too high, because we are not in that surplus position any more.

I will just give you an example of a product I am familiar with, apples. I have not looked at the C grade regulations lately but as I recall them it is a 15 per cent show of colour; 15 per cent of the typical colour is required to make C grade, whereas the fancy grade is 35 per cent. If you go into almost any retail store you will not find any C grade apples; they are simply not offered.

**Hon. Mr. Drea:** But you will find a lot of rotten or damaged grade A, which drives the customer up the wall.

**Mr. McGuigan:** I am sad to hear that because it should not be.

**Hon. Mr. Drea:** I would like to see the grade C, which in many cases is superior in quality to grade A produce which has been around too long. It is really an artificial grading which causes waste at the producer level. Apples, or any agricultural product, that by artificial measurement are called grade C, popularly connotes that it is an inferior product, when indeed the inferiority is difficult for the consumer to detect.

I think you are right in your overview—it is excellent and I compliment you on it—there has to be a re-examination of the standards. Right now they are of a highly technical nature; but none the less, when you see grade A on a can, the connotation is there. It is a subjective type of thing.

This is an area where I would like to see a little bit of work done in the future; perhaps this ministry is the vehicle for it. There has to be closer consultation between the producers' organization—the marketing board or whatever it may be—and the industry. I recognize and have supported for years the view that the producer deserves a fair share; and the best way to get that is through the

marketing board technique. I have no quarrel with that. As you have dramatically outlined today, the world of agriculture has changed. Most people do not recognize this because year after year the stats indicate that we are the greatest yield producers ever.

**Mr. McGuigan:** We produce three per cent of the world's wheat.

**Hon. Mr. Drea:** I am talking about all the other things that are not as dramatic as wheat.

**Mr. McGuigan:** Wheat is the thing they think of.

**Hon. Mr. Drea:** Yes, but these fantastic yields in agriculture, which are a great compliment to the agriculture industry, particularly the individual farmer, indicate that agriculture is better than ever in terms of productivity, and yes, it is true. However, many of the attitudes in the merchandising or final delivery system evolved over 25 years in the post-war period, from about 1947 to 1972. The world has changed since then.

Coming back to what you said before about adaptability, I do not think there has been the recognition that this is going to go on for ever. The world economy is changing every five or six years.

**Mr. McGuigan:** People are looking for a magic answer.

**Hon. Mr. Drea:** That is right. There have to be some initiatives towards new approaches, without selling up the store. The primary responsibility of a marketing board or a producers' organization is to get a fair and equitable price based upon the market conditions for the particular product, no question about that; they would be derelict in their duty if they did not.

I agree with you—I do not know what the jurisdiction is and I do not want to hang it on that—that there has to be an approach. The public accepted a number of standards in the previous supply-demand climate, and now they are beginning to feel very uneasy about those standards.

The connotation that grade A is perfect loses something when you find that it is based only on size and texture. Suddenly you begin to lose confidence in that particular standard and this loss of confidence passes down to the producer.

The question of standards is something we want to explore. It will not be easy to do because the marketing board or the producers' organization must have parameters in which to operate. I suppose what we are really asking is that they go a step further without jeopardizing their basic mandate.

12:50 p.m.

**Mr. McGuigan:** You covered some of the things I was going to say, but going back to apples, it is not a total loss. A lot of grade C apples end up as juice, so they are utilized. Fortified with a few vitamins it is a very healthy product. As a matter of fact, it is gaining on orange juice.

We should be looking at where we are going in some of our standards. I had a fight—you touched on it—a number of years ago and, giving credit to a lot of other people as well, finally we won it.

At that time there was a great movement towards the all-red McIntosh apple. The only way you get an all-red McIntosh apple consistently—we have chemicals now which do that—is to leave it on the tree until it is too ripe, but the people in the growing area wanted a red apple because that is what gives us an advantage over you fellows down in southwestern Ontario who, because of your climate, cannot grow as red an apple. We won our fight against that.

The Canada Department of Agriculture just finished a Canada-wide survey that was presented by Mr. Eric Moore. He says that people preferred the McIntosh apple over all other apples. Most of us would say the favourite was the Delicious because that is the one you see in the store selling at big prices, but something like 60 per cent of people prefer the McIntosh, and they rated condition over colour.

When you bite into an apple you want juice to fly down and stain your shirt and give you a nice palette. After all you don't eat the darn things for food value. You eat them for a pleasure sensation.

**Hon. Mr. Drea:** When you and I were a little bit younger we used to peel them before we ate them. So much for the colour on the outside.

**Mr. McGuigan:** For cooking, of course, a greener apple is better. This is just to illustrate some of the changes I am going to mention to the Agriculture people as well. I offer it to you for whatever you think it is worth.

**Hon. Mr. Drea:** I have a couple of things here, Mr. McGuigan. Our monitoring report number 17, which was for September, indicates, in table five, the price advantage obtained from purchasing larger-size packages, which is the reverse of what you said. It might be of some interest to you. While the price difference—it is all worked out in the chart; I would be very glad to supply you with it—is not 100 per cent, it is rather substantial all the way across. It ranges

from a low on instant powdered milk of three per cent—I am just picking out things here—to 54 per cent on cans of beans with pork. On salad dressing, for instance, there is a 50 per cent difference between the small size and the large size.

**Mr. McGuigan:** I was speaking specifically of produce items.

**Hon. Mr. Drea:** But this is very indicative, and there is not that much difference in containers.

Again I wish to compliment you on the presentation you have made. You have not produced any solutions and I don't think you intended to. The simple fact of the matter is there are a great many challenges throughout the whole area. One which concerns me a great deal, and I alluded to it a little bit earlier, is the preservation of agricultural land.

Another concern is the future of the domestic processing industry, particularly in the fruit and vegetable field. I went through this sketchily, but the documents have been filed with the committee and you might want to go through them more fully.

Rightly or wrongly we have to face up to the fact that at the producer and the processor level we are in a continental market. When there was the great energy crisis in the States and they literally could not move produce from southern California, Arizona, New Mexico and Texas—particularly into places like Detroit; they could get it into Chicago and New York but not into an off-distribution area such as Detroit. In this country, to consider Detroit an off-distribution point is fantastic.

**Mr. McGuigan:** It is not on the main line.

**Hon. Mr. Drea:** They moved up into our market for fruits and vegetables. Root vegetables like carrots and onions which were wintering in warehouses here traditionally kept the prices stable. Suddenly those disappeared, almost magically, down into Detroit because the trucks could get gas here and they had a 15 per cent edge on the dollar. They just came up here and got it. I don't suppose there is any time, unless equal conditions prevailed, that something like that could not occur in an individual product. If you are going to have a strong agricultural base, and this is integral to the preservation of agricultural land, you have to have a market at all times for your produce, particularly the perishable produce. The demise of our domestic processing industry could happen. I pointed out today that it is 30 per cent lower in productivity

than that of the United States on an industry-wide basis, if you do not separate the domestic from the multinationals.

Indeed I have a suspicion at the domestic level, with some of the older companies that are still operating, that that productivity gap is even wider and that we face a substantial problem in that area. And it isn't a case of old family firms that just wither down the road and perhaps should go. That isn't true. Look at the outline I did covering those years. It was because of the bigger market in the States, with the producer in the States having more capital. He became more efficient and gradually his prices became lower.

Let's face this, too. The consumers in most instances look at price. If there is only a penny or two difference, I am prepared to say they will buy an Ontario cannery product, but if it's 10 or 15 cents, if it's a difference between 85 cents and \$1, no.

You can make all the appeals you want, but let's face human nature, especially when you go to somebody on a fixed income and say, "It's your patriotic duty," they just can't do it. It is not as though it were a question of merely telling these people to shape up. If we were in Switzerland, an entirely self-contained market, then I think there would be a very quick and rational approach.

You are faced with trying to make the domestic industry as productive as possible in order to guarantee the producer a steady market. This is essential to the preservation of the land, where all of this begins. You face this constant threat from the outside. You can't cut off imports because we export certain products, et cetera.

1 p.m.

It is almost the same as the picture you described of the energy situation, et cetera, constantly chasing around in a circle. But I do believe, that in the very short term, government is going to have to face this situation.

If you are going to have that producer capable of producing and selling at a competitive market price which builds up the supply, which I am not going to say will lower the price but at least will stabilize it, with all of the other things built in, because those pressures on people to produce are on the processor as well, there has to be some very substantial thinking done. Otherwise, you may have great Canadian production, great Ontario production, but the final product is being brought in from somewhere

else, and I am not going to get into the job situation or that type of thing.

It is not as simple as saying we will give them a grant or something because, with this great and growing productivity gap, and with the processing industry facing all of those problems you raised in the energy and associated fields, they are not in a position to acquire the capital to instantly modernize, et cetera, to lower that gap.

This gives me great concern. I know it is not my primary responsibility, it may be that of another ministry, but I think that government, as a whole, has to look at the future of the processing industry.

Since you did raise the subject of meat, just one thing. The first monitoring I ever did of prices was at the request of Mr. McKessock some time ago. He was somewhat concerned, even after doing it, that we would blame the cattlemen for what was then considered the high price of meat. But we did not because it has not been high.

One thing people should consider is that today the beef producer is not getting what he should. The reason is he cannot get the price at the retail level because there is buyer resistance. People have switched to poultry. They have switched to pork. They have switched to other things. So there is a reverse price elasticity.

Based upon reasonable costs and everything else, the price of beef should be way up there. It is not because—we will chart it for you—there is buyer resistance, and that is it. They have gone to poultry for a while. When the price of beef drops, they will go back to beef. This gives me even more concern about the future of the producer.

You have raised a number of points today. Mrs. Staff, our economist, will very carefully go over the Hansard and we will give you a reply, in relatively brief order, as to what we can undertake and what we cannot undertake.

One of the other interesting things: we never did strawberries, but Mr. Riddell brought to my attention the problems the asparagus growers, through the Asparagus Growers' Marketing Board, face in getting the Ontario product into the supermarket, vis-à-vis the California product, et cetera. We have begun some initial work in that area to try to bring together the Asparagus Growers' Marketing Board and the buyers from the supermarkets, to emphasize that really Ontario has the capability, the capacity, et cetera. All they need is a foot in the door and then you will get the production figures that could justify virtually an entire

seasonal supply of asparagus sold here as first preference, rather than the other. But I tell you, it is a long procedure.

**Mr. McGuigan:** May I just reply to one thing, Frank? I know the time is over. I constantly hear people say, "If we got enough money for our produce, we would keep the land in agriculture." But I cannot see any price level that would resist the developer.

**Hon. Mr. Drea:** Neither can I, but by the same token, what I am talking about is where there is no developer. If the person on that land cannot get a price, he will go to work some place else. He will let the land grow fallow for the day when the developer comes along.

**Mr. McGuigan:** It makes it easier for them.

**Hon. Mr. Drea:** Yes.

**Mr. McGuigan:** But I just cannot see a price—

**Hon. Mr. Drea:** You cannot ask a person to go out and work seven days a week, 365 days a year, which is virtually what agricultural production is, and say: "By the way, you should get one-tenth of one per cent of a return. If you need any more, you can always get welfare."

**Mr. Swart:** I had a number of matters I wanted to pursue further, Mr. Chairman, but I guess there is no time now.

**Mr. Chairman:** You will have to do them in a press release or by letter to the minister, Mr. Swart. I will leave that to you.

The committee adjourned at 1:06 p.m.



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No. J-22

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Thursday, October 30, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, OCTOBER 30, 1980

The committee met at 3:55 p.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

**Mr. Chairman:** I recognize a quorum.

On vote 1503, technical standards program:

**Mr. M. N. Davison:** I would like to thank Mr. Breithaupt for allowing me to go first. Tonight, in Hamilton, we are having an appreciation night for two former members of the House, Reg Gisborn and Norm Davison, and I have to leave in about seven minutes to fulfil my part in the evening's festivities.

**Hon. Mr. Drea:** I won't cut you off, but I just want to say for the sake of the record, I served with both of those members and particularly I am pleased that they are both in, I hope, good health. I am sure that is extended from the cabinet of this province.

**Mr. M. N. Davison:** I will take back the minister's and the government's good wishes to the former members this evening.

**Hon. Mr. Drea:** Do you have a permit?

**Mr. M. N. Davison:** Yes, we do now, as a matter of fact. Your director was quite good and was of great assistance to us in correcting our problems with our permits.

**Mr. Chairman:** The minister should realize that the only NDP association that does not operate with permits is the High Park riding association.

**Mr. M. N. Davison:** That's right.

**Hon. Mr. Drea:** At least within the boundaries of High Park.

**Mr. M. N. Davison:** During the course of the afternoon a number of my colleagues, Mr. Minister, will raise with you a number of questions under the vote, ranging from aluminum wiring to other aspects of the building code. But the one I want to raise with you is one we have talked about before, and if I have to leave at the end of

putting it, I will read Hansard very carefully for your response.

If the minister will recall, I wrote to him at the end of May 1979 about the final air test for plumbing installations in Ontario. My concern at the time was twofold. One was that there had been no visible enforcement of those sections of the code by a number of municipalities, or anyone else in the province. My second concern was that I had heard at the time that ministry staff was thinking of changing the regulation which governed it, which was under the Ontario Water Resources Commission regulations; as I recall, section 155.

At the time, Mr. Minister, you responded to me that, yes, the ministry staff and advisers had been looking at it, but in the light of the fact that there did not seem to be a better process, there would be no major shift in the regulations, which I appreciated very much.

We are now in a position, as nearly as I can judge—and I would draw your attention to comments made by Paul Spenst, who is an adviser to your ministry, in late September of this year—that a number of our cities are still violating the rules, in considering those final tests for plumbing installations.

There are, as the minister will recall, a number of cities, such as Windsor and the Sault, that performed this test. It is not a prohibitively expensive test. The equipment is, I think, something like \$300 store-bought, and about \$25 home made. It is, as far as we know, the only adequate and proper final test to be made and yet, we still have the situation where major construction projects, from hospitals to shopping centres to apartment buildings, in some areas of this province, are being built subject to inferior tests.

It seems to me it is an important matter of public safety because escaping sewer gas, if undetected, can cause illness and in extreme cases can cause explosions. It is something I have been concerned about. I know it is something the minister has been concerned about. I appreciate his concern, but I want to know when we are going to crack down on

some of these municipalities that are flouting the regulations.

I would appreciate hearing the minister's comments, and the comments of his staff. I think it is particularly important now that an adviser to your ministry has publicly stated that this violation is continuing.

**Hon. Mr. Drea:** I have with me, and perhaps for the sake of Hansard I should introduce him, Mr. Harold Yoneyama, who is the director of the technical standards division of the ministry. We also have Mr. Graham Adams, who is the director of the building code branch.

**Mr. M. N. Davison:** Could we have an answer?

**Hon. Mr. Drea:** Oh, Mr. Adams will answer them.

**Mr. Adams:** Just to confirm; at the moment, since there seems to be no equal alternative to the final test, there is certainly no attempt or thought in our minds to change that requirement.

Your concern is the apparent differential in terms of the requirement throughout the municipalities. We have drawn this to their attention by correspondence. Some of the statements we think will take hold and effect in the sense that members of municipalities now are alerted again to the fact and they have that sense of responsibility.

Other than that we have a continuing program, and I do not mean that in the sense we are able to get around to all of the municipalities in the field, but as we visit with the municipalities in that instance, we certainly are reminding them of their responsibility under the regulations.

We have discovered that this is a controversial subject. That does not necessarily sway us, but the mechanical engineers' association of Ontario is also doing a survey on its own throughout the municipalities as to which do and do not require the test and there are differences of opinion over whether or not it is valid. We believe at the moment that there should be no relaxation of the test itself.

4 p.m.

**Mr. M. N. Davison:** The point I am trying to make and on which I hope to get an answer is that there are municipalities in the province, be it Scarborough, where the minister's riding is, or Hamilton, where my riding is, that are not seeing that this test is enforced. I think that does cause some questions about public safety in those buildings.

It seems to me a point comes at some time when the ministry has to get tough and say, "All right, you people out there, this is the law, this is the test, make sure these tests are undertaken." I suggest we have probably reached the point where although we have talked to the municipalities there are still so many that are recalcitrant it is time for the minister to get tough with them and say, "Yes, indeed, you do have to live up to that part of the regulations."

Would you not agree that, if that point has not come now, it should surely come soon?

**Mr. Adams:** I do not disagree with taking that point of view with them. That is partly the reason we are interested in finding out how many municipalities require the test and how many do not, so we can concentrate on those areas it is important to concentrate on and bring this to their attention.

**Mr. M. N. Davison:** I have to be off.

Thank you and I will take the minister's greetings with me.

**Mr. Chairman:** Take the greetings of the committee.

**Mr. M. N. Davison:** I certainly will.

**Mr. Chairman:** I am sure your father has a good member following in his footsteps.

**Mr. M. N. Davison:** He will never believe you.

**Mr. Chairman:** I believe Mr. McClellan had a supplementary.

**Mr. McClellan:** The concern I have to raise is not specifically on the matter before us but has to do with some follow-up to a matter I raised in the estimates committee earlier in the year. It has to do with the Housing and Urban Development Association of Canada home warranty program and what I understand is the failure of the ministry to follow up on commitments that were made.

**Hon. Mr. Drea:** I beg your pardon?

**Mr. McClellan:** It has to do with my understanding of the failure of the ministry to follow up on commitments that were made here in the committee as well as other places.

I am in the hands of the chair and of the committee. I do not want to disrupt the discussion you are having this afternoon about aluminum wiring, but I would like to ask the committee for its indulgence at some point—perhaps tomorrow would be more appropriate—to raise this matter and to try to get clear on the record exactly what is happening.

**Hon. Mr. Drea:** Maybe we had better do it right now, Mr. McClellan. I know the chairman is going to draw to your attention that

matter has already been voted upon, but I am perfectly prepared to discuss it.

**Mr. McClellan:** I am asking the committee and the chairman if we could have a moment or two to try to get this cleared up.

**Mr. Chairman:** Vote 1502 will be opened up again and it was agreed to do that next Wednesday as a result of a request from Mr. Renwick. If the minister wants to answer your question and the committee agrees, I am quite prepared not to ask you to come back next Wednesday, but Mr. Breithaupt did give up his spot to Mr. Davison because Mr. Davison had to be out of town.

**Mr. Breithaupt:** I was only going to inquire, Mr. Chairman, as to your schedule for the remaining time available. I understand the committee is able to sit tomorrow morning and we probably could deal with votes 1505 and 1506. That would leave the liquor licence matter and rent review generally to the next two sessions, probably next Wednesday morning and the following afternoon.

I was not aware that vote 1502 on financial standards was going to be looked at again. Is it with respect to any particular items?

**Mr. Chairman:** The minister may not know the two items we opened up. Mr. Renwick asked permission of the committee to bring up the matter and the minister and the committee agreed.

I suggested to Mrs. Campbell, who had another matter that she had asked the committee to deal with in its inquiry under the annual report of the Ministry of Housing, that it was inappropriate for the committee to deal with it under that topic but that, if the committee wished, since the vote was opened up, she could deal with it briefly on Wednesday.

The vote will be opened up by agreement of the committee on Wednesday and HUDAC will be dealt with.

**Hon. Mr. Drea:** I am sorry, Mr. McClellan. I was not told about that earlier.

**Mr. McClellan:** I did not know vote 1502 was open.

**Hon. Mr. Drea:** I knew about Mr. Renwick.

**Mr. Breithaupt:** What is Mr. Renwick's item?

**Hon. Mr. Drea:** Mr. Renwick had a request that he wanted to discuss the 10 per cent insider rule with the chairman of the Ontario Securities Commission.

**Mr. Breithaupt:** Is Wednesday the most opportune time for the chairman?

**Hon. Mr. Drea:** Yes, you set that up. That was dealing with the 10 per cent insider fee, the tenth of the month reporting, and

so on, based on certain public concerns that Mr. Knowles, the chairman of the commission, had expressed.

**Mr. McClellan:** Could I ask one question now and then some more questions next week? The one question I have is: Are the repairs on the homes going to be done this fall or not?

**Hon. Mr. Drea:** I have a commitment that those repairs will be done.

**Mr. McClellan:** This fall?

**Hon. Mr. Drea:** As far as I am concerned, I want them done yesterday. I have a commitment and they will be done.

**Mr. McClellan:** I guess we will just have to—

**Hon. Mr. Drea:** You can discuss it all you want, Mr. McClellan. You asked me for the history of this. I went out and I got a commitment. I am the first to tell you that there is some balking in the negotiations, but I will tell you that the minister—it was not the ministry—the minister went out and obtained a commitment from the industry.

**Mr. McClellan:** Because you gave that commitment to me.

**Hon. Mr. Drea:** I gave it in the House.

**Mr. McClellan:** That is right.

**Hon. Mr. Drea:** It is not the ministry. It is the minister. Those repairs will be done and I want them done as rapidly as possible. I am getting very frustrated myself that they have not been done now.

**Mr. McClellan:** I do not want to get into a long debate here and disrupt the schedule of the committee but I think part of the commitment was that those repairs would be done before freeze-up so they could be done this season. It is getting cold out there, Mr. Minister.

**Hon. Mr. Drea:** I am aware of that and there are also some people who have been sandbagging us. I can go into that a little and perhaps if Mr. Simpson can be here Wednesday we can go through them all.

**Mr. McClellan:** I would appreciate that very much.

**Mr. Chairman:** Mr. Makarchuk, were your questions on the items raised by Mr. Davison?

**Mr. Makarchuk:** No, I intend to speak on aluminum wiring.

**Mr. Breithaupt:** The reason I had asked we particularly review the theme of aluminum wiring under this vote was because of a variety of concerns I have had over the past year or so, some resulting from



questions which had been asked of the minister in the House and others from information I had received.

I want to reiterate, just for the record, what precisely is the issue with regard to aluminum wiring, as I see it. The concern that aluminum wiring is a hazard relates not to its capacity as wire as such, but to the nature of the connections that must be made between the wiring and a receptacle, a panel box or a baseboard heater.

The problem with the connections arises, primarily, on account of the physical properties of aluminum. Aluminum expands when heated more than copper does and, under stress situations, tends to flow away from pressure points far more than copper does, over a given length of time.

One may consider an aluminum wire held in place in a receptacle by a screw. The repeated heating and cooling cycles brought on by normal electrical use causes expansion and contraction of the wire, not of a sort which can be noticed by the naked eye, but significant in metallurgical terms.

Over time, the connection may loosen. Factors such as poor installation, vibrations and conversion only increase the probability of loosening occurring. With such loosening, aluminum oxide forms on the wire, an oxide which is a very poor conductor, unlike copper oxide. Eventually, resistance builds up along the contact points which can cause significant heat build-up. Continuing heat build-up can ignite adjacent materials, can cause short circuits or electrical sparks to start shooting out, all of which could lead to a fire. This is the basic scenario for how the use of aluminum wiring can lead to a fire.

We are all familiar with the commission of inquiry on aluminum wiring conducted by Dr. J. Tuzo Wilson, whose report was released in March 1979. Dr. Wilson made 43 recommendations relating to such matters as training of electricians, upgrading standards relating to electrical devices, better inspections of residential wiring systems, more public information dissemination about aluminum wiring, directions to fire departments regarding fire investigations and so on.

While Dr. Wilson did not recommend the use of aluminum wiring be banned in residential homes in Ontario, he did state that the aluminum-wired residential branch circuits which had been installed in Ontario homes in the late 1960s and early 1970s, representing upwards of 200,000 homes, were, and I quote, "less reliable and probably less

safe than copper-wired circuits." This finding of unreliability was based mainly on the higher propensity of aluminum-wired devices to result in failures such as overheating, sparking and short-circuiting.

4:10 p.m.

Dr. Wilson felt the major cause of these failures was poor workmanship on the part of the installers. Further, he stated that much remedial work had been done since the early 1970s—indeed to such an extent that he stated in his report, "The commission was forced to conclude that there had been real problems in some localities, but that these had largely been resolved before the inquiry took place;" and further, "Everyone involved with the commission naturally watched with concern for evidence of new failures and fires, but few were reported and the worst of these turned out to result from causes other than aluminum wiring." Dr. Wilson stressed, therefore, continual upgrading of electrical standards and electricians' training, and continuing publicity to reach those home owners still affected.

To wrap up this overview of the issue, I should finally mention that the Aluminum Wiring Resource Centre was set up as a result of the Wilson commission, to provide information to consumers regarding aluminum wiring and to co-ordinate the free inspection service of homes wired with aluminum wiring as recommended by Dr. Wilson.

Having made that summary I would like to expand upon six particular points in this issue. First of all, contrary to Dr. Wilson's experience, the problem has not died down. People are continuing to report failures and fires attributable to aluminum-wired receptacles and devices.

Secondly, there are still in place in homes in Ontario many devices that have been banned for use in the construction of new homes. As well, there are many devices and receptacles in place which were never approved for use with aluminum wiring in Ontario.

Thirdly, the Aluminum Wiring Resource Centre has not brought to the public's attention the potential hazard that old-technology aluminum-wired receptacles pose.

Fourthly, the commission sidestepped the safety issue involved in the aluminum wiring controversy by couching the problem in terms of "reliability."

Fifthly, the commission distorted the issue by emphasizing the human error factor caused by allegedly poor installation of aluminum wiring, when there is strong evidence to suggest that failures occur as a result of the natural properties of aluminum wire itself.



Finally, aluminum wiring was approved for use in Ontario without the proper testing being done; the appropriate regulatory agencies were pressured by the aluminum wiring industries to approve the general use of aluminum wire in residential homes because of the spiralling cost of copper. In short, safety considerations gave way to the economic imperatives of the industry.

Contrary to the experience of Dr. Wilson during the course of his commission, it is clear that the incidence of problems with aluminum-wired connections has not abated. Since its inception in March 1979 until May 1980, a period for which we have data, the Aluminum Wiring Resource Centre received 10,307 telephone calls and 6,705 requests for inspection. Of the inspections performed, problems with receptacles have been identified in approximately 15 per cent of the households—that comes out to some 900 homes in a period of 14 months—in spite of a promotional campaign about the resource centre which can only be described as half-hearted.

Secondly, while the new technology, copper-aluminum revised (COALR) receptacles have now come on stream, there is no way of knowing how many receptacles now banned for use with aluminum wiring in Ontario are still in place in Ontario homes. Between 1970 and 1974 the ban against the use of push-in receptacles with aluminum wiring was lifted, for unknown reasons. We have no idea how many of these are still in use. Further, as Dr. Wilson points out, some other makes of push-in receptacles which had not been authorized for use with aluminum wire at any time were in fact used.

In addition, it was confirmed by the commission that an undetermined number of wiring devices with steel terminal screws had entered the Ontario market. These steel screws were never authorized for use in Ontario. We do not know how many of them there are, or how many homes have aluminum-wired receptacles using steel screws.

You will recall that in my opening statement to the committee in the spring of this year I identified what I felt was the shortcoming of the Aluminum Wiring Resource Centre's efforts to attract people's attention to the aluminum wiring problem. The ads at that time said: "Aluminum wiring. Is your home wired with aluminum? Free information is now available. If an inspection is required, arrangements will be made for an Ontario Hydro inspector to check your home free of charge and determine if there

are any problems. Know the facts. Phone 416-965-6479. Collect calls accepted."

I questioned in my statement whether people would be prompted to call: "Why would they think they needed an inspection? There is nothing there to indicate that aluminum wiring is, in fact, a potential hazard. There is nothing to indicate that aluminum wiring causes far more of the old-technology receptacles to fail than does copper. There is nothing there to indicate that such failures can cause the connections on these receptacles to heat up to such an extent that a fire can start. There is nothing there to indicate that this heat can ignite materials outside the face of the electrical outlet, such as furnishings, bedspreads, curtains and so on, or that it can ignite materials inside the outlet box, such as wallboard or splinters and so on.

"The heat can ignite certain types of plastic face plates, causing them to smoulder and possibly ignite the wall panel, the wallpaper or other flammable material. The advertisement does not indicate that certain types of receptacles are a real hazard if connected with aluminum wiring. This is particularly so with the push-in type of receptacle."

The minister promised, at that point, that he would give it one more crack, and this summer the ministry issued a public service announcement. This is what it said: "If your home has aluminum wiring, you can have a free safety check by Ontario Hydro.

"These signs could indicate aluminum-wiring problems: Over-heated or discoloured wall outlets; blown fuses or circuit breakers that trip frequently; unusually warm switches or receptacle face plates; persistent flickering of lights.

"If you have a problem, call the Aluminum Wiring Resource Centre at"—its telephone number, as listed. "Collect calls are accepted." That was the complete announcement.

I suggest there still seems to be a reluctance to tell the public that aluminum wiring may be a fire hazard. I do not think it has been stressed as much as it should be.

Another item is the relationship between failures and fires. Dr. Wilson stated he did not find information relating overheating connection failures to ignition of fires. He therefore concluded that, "If aluminum was less reliable, it would seem logical to suppose that it was also less safe, but statistics are lacking and other evidence is uncertain about the safety aspect."

I suggest that from an analytic point of view, Dr. Wilson missed the boat in this area, because the possibility of ignition due to a high-temperature source such as a failed aluminum-wired receptacle and the actual spread of a fire both involve the concept of probability. Under seemingly identical conditions a fire may ignite and spread in one case, while in another no ignition occurs or the ignited fire dies out without spreading. The probability of ignition and spread can change drastically with small changes in the temperature, the amount of heat generated by the failing connection, the time of exposure to higher temperature and heat, moisture content and ignition temperature of the flammable materials.

To illustrate that concept of probability with respect to fire, consider the ordinary match. It does not always light at the first attempt, but there is a high probability of ignition, and once lit, the fire may or may not readily spread to other materials. For instance, an attempt may be made to ignite an ordinary piece of lumber with a match flame and it will generally not work, but not always so. The probability of it catching fire is low. Similarly, the probability of fire from lit cigarettes cast randomly about a room is low. But we surely recognize that such actions taking place unnoticed in a home would be a significant threat to life and property.

The ignition and spread of fire due to overheated aluminum-wired connections is also subject to probabilities, as are virtually all other recognized hazards. That all aluminum-wired connections do not overheat, and that of those that do only a fraction will cause fire, is no reason to treat the risk lightly. The risk is excessive, I suggest, by modern norms of electrical safety.

If you want studies in this area we can refer you to the Ontario Hydro study released on July 24 of this year, entitled, *Fire Initiation Potential of Failing Electrical Receptacles*. The study reports that 20 aluminum-wired receptacles which had failed were subjected to further testing. Three initiated fires. Three of 20 is, of course, a 15 per cent rate. Hydro in their wisdom concluded, "The low fire initiation results observed in these tests suggests that only with difficulty can overheating connections start fires." I find it incredible that Hydro defined a fire as "the appearance of flames."

4:20 p.m.

Firemen are well familiar with smouldering beds that produce such amounts of smoke that asphyxiation of an occupant or occu-

pants in a room can result. A bed pushed up against an aluminum-wired receptacle that is producing high temperatures as a result of its failure can also cause the bed to smoulder, with the possibility of the same tragic results, even without flame.

Another concern I have is with respect to the assertion that the major factor in the unreliability of aluminum-wired receptacles is poor workmanship at the time of installation. Dr. Wilson stated this. The minister has given this reason on occasion. The problem with this statement is that it is misleading because of what it omits to say.

First of all, as Dr. Wilson states, aluminum wiring is "more susceptible" to poor workmanship than copper. What that seems to be saying is that in the ordinary course of events on the work site, copper is more tolerant of the odd inadvertence or imprecision of installation. We expect such tolerance under those conditions. Unfortunately aluminum wiring is not nearly so forgiving.

Secondly, as Dr. Wilson acknowledges, aluminum-wired connections are susceptible to loosening over time because of thermal expansion, flow from pressure points and so on. This is in spite of the connection having been tightened securely from the outside.

Indeed, Ontario Hydro, in an electrical inspection bulletin dated January 1, 1966, after reviewing the physical properties of aluminum, warned, "Repeated heating and cooling cycles may loosen connections."

I would also like to refer to a study by Wright Malta Corporation, issued June 1980, entitled, *Loosening of Aluminum-Wired Binding Head Screw Connections on Canadian Receptacles*. The results showed that of 120 connections, only 28 per cent retained their original tightness over time, some loosening as much as 66 per cent. This explains why, in the course of field surveys, one may find loose connections. The authors report this is a natural consequence of the material properties of aluminum. To conclude that it is poor workmanship may not only be a hasty, but also an erroneous conclusion.

My greatest concern is with regard to how all this came about. What were the checks that should have operated to prohibit the introduction of unsafe electrical devices into the market? Let us go back to the Ontario Hydro bulletin of January 1, 1966, which I referred to earlier. Allow me to quote just this passage:

"Certain electrical and mechanical characteristics of aluminum necessitate the use of special techniques and devices in terminations and splices. Although a great deal of

development in this respect has been carried on relative to transmission and distribution systems, little has been done to solve the problems for interior wiring systems."

After a review of the physical characteristics of aluminum, the bulletin concludes: "The above information is intended as an introduction to the use of aluminum conductors in building wiring. If the use of aluminum for this purpose increases significantly, we expect the manufacturers of wiring devices and other electrical equipment will make alterations to provide terminal facilities suitable for both copper and aluminum. The design of most such terminations presently in use are based only on copper conductors."

How did the industry respond to the challenge of providing terminal facilities suitable for both aluminum and copper? Let us take a look at a letter from Canadian General Electric to the Canadian Standards Association dated February 28, 1966. After indicating that Underwriters Laboratories in the United States were about to approve connecting aluminum wiring to receptacles manufactured for use with copper wire, the letter goes on, "We suggest that a bulletin be issued stating that the CSA laboratories consider that wiring devices such as receptacles, lamp-holders, and snap switches . . . are suitable for use with either copper or aluminum conductors."

Alcan Limited made a similar request of CSA on July 5, 1966, and according to Dr. Wilson, CSA responded in this way: "The CSA testing laboratories did not do any extensive testing at this stage. It is apparent that there was general awareness of the differences between copper and aluminum, but very little laboratory testing and limited field experience with the use of aluminum residential wiring systems."

What was the great rush to getting aluminum wiring use approved without sufficient testing? As Dr. Wilson states, "In the mid-1960s, political problems in the largest copper-producing countries, Chile and Zaire, made copper an expensive and sometimes scarce material."

Let us look at what the Alcan letter referred to earlier says: "We would like the opportunity to present facts to the interested parties to preclude the possibility of an unfair restriction on the use of aluminum conductors. Furthermore, this type of restriction would prevent prospective purchasers from taking advantage of the lower price of aluminum wire." It would appear that economic considerations overcame the need for

a thorough investigation of the potential hazard of aluminum wiring.

It is interesting to note that one important example Alcan pointed to as a model of the safety of aluminum wiring use was a development of 99 apartment units in Ravenswood, West Virginia, which was wired by Kaiser Aluminum in 1957 or 1958. Dr. Wilson also pointed to the Ravenswood experience as a problem-free, aluminum-wired project. Had the Canadian Standards Association examined this project it would have found that the wiring and the electrical devices were installed with the most exacting specifications, with the application of various compounds to prevent oxidization and with the use of electrical devices that generally were not used on a mass market basis.

In other words, Kaiser wired these homes under conditions and with materials that would never be used in the course of normal home construction. As a model, therefore, it could not reflect how aluminum wiring would respond to normal situations.

I suggest that apparently Dr. Wilson did not know this. Further, had he not relied on the industry's representations and instead had phoned the Ravenswood fire department, he would have found that four fires had been reported involving the branch circuit wiring. These occurred in April and August 1974, August 1975 and September 1977.

Had Dr. Wilson or the commission staff gone and inspected the site, they would have found, as did the Consumer Product Safety Commission in the United States in 1979, that in addition to the fires, tenants complained of overheating of switches and receptacles—all this despite the fact that the project was wired in accordance to near-laboratory specifications. Instead, Dr. Wilson relied on the testimony of the aluminum wiring industry.

In the circumstances of the Ravenswood example, with the laboratory conditions that existed and the near perfection with which Kaiser attempted to wire and service this site, four fires still resulted. In a project where that kind of care would not be taken, I think we all would agree that the problems that could occur might be substantial and indeed exceed the four which occurred in that 99-unit project.

Mr. Minister, I have taken my time this afternoon to deal solely with this area of aluminum wiring because I think it is still an issue in the province and that a better job could be done by the Aluminum Wiring Resource Centre to arouse public awareness. I ask you to step up the efforts in your adver-



tising to stress the fire hazard. None of us would want to unduly alarm persons whose homes may be quite safe, but we are going to have to go a bit further to strike the appropriate balance. An opportunity for a reasonable warning must be given to people who have homes wired with aluminum, particularly with old-technology receptacles, because we can see a potential fire hazard.

Perhaps some form of tax credit approach could be suggested to assist those residents who should be replacing aluminum-wired electrical devices which are at present in their homes and which are now banned in Ontario. That kind of a program, depending on the kinds of receptacles involved and the time over which the replacement is done, is going to cost some money. Yet, the potential savings and benefits from reductions in fire damage make it worth another try.

I hope the minister and his staff will review the comments I have made this afternoon, and if they agree that concern still exists, that we will all work together for a better advertising program to get to the root of this problem.

4:30 p.m.

We all talk about the costs of advertising. This has been a subject of much interest to the Legislature over these last several months. However, some advertising programs are of more use than others, and I think the advertising program I have suggested would attempt to approach this problem in a more thorough way. The problem is not going to go away, and may well wind up costing us more over the years than one good attack on it. I think it is an opportunity that should not be missed.

I hope the minister will consider my comments this afternoon on this issue, and I look forward to any response his officials may have at this time or in future.

**Mr. Chairman:** Thank you, Mr. Breithaupt. The minister has indicated that he would like to hear the NDP on this topic. Then he will answer both together.

**Hon. Mr. Drea:** There was one comment which was somewhat extraneous to the rest of it. That concerns the matter of getting into the household to look at the wiring.

I am not happy with the penetration that has been achieved so far, but I do not think paid advertising is the panacea. I can buy you some ads tomorrow and you will not get any phone calls even if I make them say, "This is my problem." As a matter of fact, what is in this committee today will probably elicit more than full-page ads.

We are in the process of going directly into people's homes. Some people consented already, and I do not see why we would not get consent right across the province. We are sending a message with the Hydro bill. That way, it will reach every house.

**Mr. Breithaupt:** I am glad to hear that.

**Hon. Mr. Drea:** I think it will start in the Peel area, in Brampton, through the local hydro. The notice will be in the envelope together with the bill, which means it will go to every electricity consumer in the province. I really consider that to be the final effort because at that point I would expect a response.

If you look back, during the Wilson inquiry there was a great deal of interest. Everybody waited, almost with bated breath, for his report—which by coincidence came out on a Friday. It was not much of a news weekend and it got a lot of media attention. I do not think it was more than 20 minutes or so after the announcements were on air—I think at about 9 or 9:30 a.m.—that the first phone calls came into the centre asking for inspections and it continued right through the weekend. The centre was in full operation and continued to be for a period of time. There were various media endeavours, such as talk shows and so on, where the subject was talked about; and people inquired.

That, I think you would agree with me, is a form of advertising. It was never half-hearted; we tried every vehicle to get through to people.

I find it fascinating that on the public service announcements—I did those myself and I think spelled it out—we got marvellous comments from all kinds of people. And as I travel the province in the course of my duties, people tell me, "I heard about aluminum wiring." I would say, "Have you got aluminum wiring?" "Yes." "Going to get an inspection?" "No."

At this point you try to convince them. If I talk to them personally, or someone from here does obviously they will have an inspection. But what concerns me is the people who say no. They recognize the message; they remember they heard it a week or two ago—and I have had some connection with it—yet they still say no.

I think that must be the last effort to get the message into every household, short of a mandatory inspection by hydro, which we know would be totally unacceptable. Really, I think this is the last opportunity.

In addition, there will be a lot of work done in connection with some other pro-



grams by the Ministry of Energy, as their budget permits, in upgrading wiring and so on particularly for the conversion from oil to electrical heat. One does not know what kind of wiring is involved, but I have a suspicion that in those areas which are going to be most affected, such as the Ottawa Valley and so forth, it will be copper wire, because the homes there are older.

**Mr. Breithaupt:** In northern Ontario.

**Hon. Mr. Drea:** Yes.

In any event, we know that on our program there are going to be very competent electricians involved for the first time. We want to work with that and we want to work with the off-oil program. I will do anything to get inside the house.

I will tell you, Mr. Breithaupt, my own experience with aluminum wiring—

**Mr. Breithaupt:** Yes, I know. You did this program yourself, didn't you?

**Hon. Mr. Drea:** No, but I do have aluminum wire in my own home.

Knowing the people who installed the wire in my own home, I did not ask for an inspection. In the course of events there was a problem with the aluminum wiring in my home. It had nothing to do with the installation whatsoever—notwithstanding some scurrilous attempts in Scarborough to look at a building permit.

**Mr. Warner:** I did not write the news story. Were you referring to the news story?

**Hon. Mr. Drea:** Yes, I am referring to the news story.

The problem developed in the normal course of events in an external outlet. I am sure those who have children will understand what happened. Despite telling the children that when they are using the electric lawnmower they are not to yank the plug out, over a period of seven years the outlet and the insulation around it was literally pulled free of the mortar. Ice and water got in and started circuit breaking. When the lights start dimming, you get somebody in.

All I am doing is to give you my own example: Having every confidence in the people who installed the wiring, having had no problem and having found no heat or discolouring in the receptacle boxes, I never asked for an inspection. I suppose I should have set an example.

I think I should mention the response, based on the numbers you or Dr. Wilson gave—200,000 or 250,000 because nobody really knows for sure. So far only about two per cent even ask for an inspection, and in

one out of 10 cases the installation was done without a permit.

Now, we are not questioning the right of people to do their own wiring, but as it was not done with a permit, there was never an inspection.

**Mr. Breithaupt:** It shows you the vast possibilities.

**Hon. Mr. Drea:** Wiring done without a permit means it could have been done in the best of circumstances, by a proper electrician who is moonlighting and does not want a record of his activities kept, to in the worst circumstances, God knows who did it, or it was done out of a manual. One has every right to do it, but my concern is, it is supposed to be inspected.

In some cases I suspect they don't want a visit, not because the main wiring was done clandestinely but because there is something in the attic or the rec room that was finished off and never inspected.

**Mr. Breithaupt:** And the whole thing will be looked at.

**Hon. Mr. Drea:** It is the same as it is with the fire inspector. You can recall that people violently objected to the fireman coming around and looking in their basement. They played on civil rights. "You can't come through my door." But the real reason is they are terrified he is going to find something in the cellar which will mean a repair bill—no matter how much we tried to overcome their objections and to persuade them that it would be a friendly visit.

Just to wrap up the thing: We are embarking on the program, which will probably take three or four months because of different billing cycles, et cetera. We are hoping for the full co-operation of the Ontario Municipal Electric Association. There will be no problem with hydro directly, but the notice goes into the house with the bill.

4:40 p.m.

We will mention the possibility of fire, along with the simple tests one can do. Obviously, if one can reach over and do something in the matter—it is as simple as touching a receptacle that is warm with one's hand—one says, "Ah, ha." Some people tell us all kinds of things should be put in there. I find when one goes to a home owner with a lot of diagrams and technicalities, no one understands them, so another thing is put off until tomorrow.

What happens after that I will just have to share with you. I would be hopeful there would be a significant number of requests

in conjunction with up-wiring and people looking at various heating alternatives in connection with this.

**Mr. Breithaupt:** Or renovations.

**Hon. Mr. Drea:** This is a rather large net right across the province at this time, a net not confined to certain neighbourhoods or what have you. We will see what happens.

**Mr. Makarchuk:** I think the minister probably does not quite comprehend the magnitude of the problem. As the report said, there are about 250,000 homes in Ontario in a situation where those connections and receptacles are getting older and where the trouble is becoming more serious. It is a problem that develops as a result of the things outlined but, also, time is a very important element in the problem.

Most of the homes were built between the 1950s and the mid-1960s. The time for those receptacles to start corroding and developing problems or overheating is about now or within the next few years.

**Hon. Mr. Drea:** You are talking about all kinds of receptacles, not aluminum wiring.

**Mr. Makarchuk:** I am talking about aluminum receptacles. That is where the problem lies in the homes.

**Hon. Mr. Drea:** I think you would be a little more accurate if you confined it to the 1970s.

**Mr. Makarchuk:** I am talking about the wall receptacles, the fuse boxes, et cetera.

The problem is coming on stream, Mr. Minister, because of the technical problems that were outlined by the member for Kitchener, but it is a matter of time as well. As these little matters of corrosion and so on continue, eventually, over a period of time, it becomes a serious problem.

The time is becoming ripe when you are going to have some rather serious problems in that area because, in effect, you have not really coped with the problem. You have not rewired the homes. You have not dealt with the thing, with the odd exception. You are nowhere near dealing with the 250,000 homes you have right now.

I have a feeling one of these days in some residence there is going to be a tragedy which will be traced pretty well back to the aluminum wiring. I think your idea, the advertising program, is really inadequate.

I would suggest you do something similar to what Bell Canada did last summer in trying to replace the ordinary phone outlets with jacks. They hired a bunch of students and provided them with technical training. You could do a similar program. You would go

into areas in a more or less a door-to-door operation, as Bell did. They did not argue about infringement of people's rights or inspections. They knocked on doors. If one were home, they came in and said, "Can we put in the jacks?" That is the way they operated. A letter was sent around first, saying they would be doing that, but basically that is the way they operated.

You could do something similar by sending an organized crew under the supervision of an experienced electrician, journeyman or someone who knows something about it, to go from house to house, take apart those receptacles, look in them and, where the situation needs rewiring, readjustment, replacement, or installation of the new copper-aluminum connections, perhaps this could be done. Whatever technical means you have available right now, could be installed. If not, the people will at least have a report saying, "These receptacles are dangerous, will ignite and, therefore, you had better get an electrician in here who can do a proper job."

I feel it is like a ticking bomb hanging over you, if I can use that expression. You are the only minister who can deal with that. That is your responsibility. Perhaps you think 250,000 homes—if that is the figure—may be a lot, but looking at it in terms of when Ford, General Motors or Chrysler has a problem with cars, the call-back goes into millions of cars on some occasions, but they do it and they spend the money. They are forced to do it. I think you have to do something of this nature.

Who pays for the cost? Whether it is Hydro or somebody else, how it is going to be financed could be hammered out somewhere in the process. You are the only one who has that responsibility and the clout available to do something about this serious problem.

Up to this point, I feel your advertising is just like everything else. You advertise. People look at it and say, "Yes, it sounds good; perhaps I had better do something about it," but little happens. Few people react to it because it is not an obvious problem. The receptacle keeps working. Until such time as something serious happens, most people do not react to that kind of electrical problem, as you did in your own case.

**Hon. Mr. Drea:** No doubt your house has been inspected.

**Mr. Makarchuk:** Yes, it has.

**Mr. Warner:** I have a couple of questions for the minister. For starters, I enjoyed the presentation by the member for Kitchener because it was accurate in terms of the—

**Hon. Mr. Drea:** If I might interrupt, there are certain things about that we are going to challenge substantially. I dealt with only one part. I do not want it left that I have accepted that.

**Mr. Warner:** I would subscribe to it from the work I have done on the issue over the last few years. The government is saddled with trying to solve a serious problem because some giant hoax has been perpetrated on the good citizens of Ontario. The government is left on the spot as the protector, obviously, of consumers in attempting to resolve the problem.

One way to handle it was by a commission, as you did. That was a good idea. The report came in and it was a bit wishy-washy, in my opinion, for whatever reason. Dr. Wilson had the information and if one reads through it, it says aluminum wiring is dangerous. But he does not come down with tough recommendations. What do you do now? How do you clean up the mess?

At the outset the government should simply have said—and maybe you have said this and I have missed the message somehow—that the province would assume liability for homes that have defective aluminum wiring through no fault of the owners. You make a statement that the province will assume the liability. That is a good start.

The other thing that should have been done at the outset was to have said, "The province will not allow aluminum wiring to be used in new home construction from now on." That is at the moment when this issue struck. I would have to check all the dates, but it certainly goes back to 1977 and may go back to 1976.

At that point when you had both Canadian information and some work being done by that consumers group—I cannot remember their correct title—in Washington—

**Hon. Mr. Drea:** It came to the same conclusion.

**Mr. Warner:** Yes, that it was dangerous and should be banned.

**Hon. Mr. Drea:** No, it did not. Come on. The American report vindicated Dr. Wilson. That's why everybody shut up.

**Mr. Warner:** That's not accurate.

**Hon. Mr. Drea:** Sure, it's accurate. I read, too, you know.

**Mr. Warner:** While you are going through the answers, I will dig out the material—

**Hon. Mr. Drea:** You do that.

**Mr. Warner:**—from the lawyer for that consumers group.

**Hon. Mr. Drea:** The lawyer? Hey, the report; the report that was issued to the American government.

**Mr. Warner:** No, I was referring to the lawsuit against the aluminum companies.

**Hon. Mr. Drea:** That's not the same thing. You talked about the report. Historically, there was the Wilson commission and then, nine or 10 months later, there was the American consumers' protection agency report on aluminum wire. That report by and large vindicated the conclusions reached by the Wilson report.

**Mr. Warner:** Are you referring to the US Consumer Product Safety Commission?

4:50 p.m.

**Hon. Mr. Drea:** Yes. Then we go on to a lawsuit in Kentucky which was thrown out by a grand jury. Then we go on to all kinds of lawyers' things in the United States.

**Mr. Makarchuk:** All sorts of things get thrown out in Kentucky.

**Hon. Mr. Drea:** If you are suggesting there is something the matter with a federal court and a federal grand jury in Kentucky, that is a pretty serious allegation.

**Mr. Warner:** Let me quote: "As you are aware, the commission conducted an intensive investigation into the fire hazards associated with the use of residential aluminum wiring systems. As a result of the evidence obtained in this investigation we filed a suit in the United States district court for the district of Columbia seeking to have old technology aluminum wiring systems, 1965-1973, declared an imminent hazard pursuant to section 12 of the Consumer Product Safety Act. The suit was filed on October 26, 1977."

At that point, they were waiting for a decision from the court of appeal as to whether aluminum wiring systems are consumer products. They had to go through a definition jurisdiction first.

The lawyer enclosed a copy of: "the initial pleadings in the case which contained some of the technical data and consumer affidavits the commission compiled during its investigation. I have also enclosed a copy of a pamphlet we prepared alerting consumers to the hazards associated with these systems, the symptoms to watch for and the suggested remedies. We are seeking to have the district court order the manufacturers to distribute this pamphlet on a massive scale, as well as to repair the systems."

I think the letter is pretty clear. It is signed by Norman Barnett, solicitor, US Consumer Product Safety Commission, Washington, DC. I spoke with this gentle-



man several times on the telephone during the period when it was at issue, and there was no question in their minds that it was a hazard. They were attempting, first, to sue the manufacturers and second, to arrange for a massive distribution of pamphlets which would alert consumers to the hazard involved and the possible remedies. That was what they were attempting to do.

**Hon. Mr. Drea:** I think, Mr. Warner, you would also want to put in there that this dealt with American standards for aluminum wiring, not necessarily with Ontario standards.

**Mr. Warner:** You were attempting to suggest these guys were all on-side with you about aluminum wiring. I was saying that is not so.

**Hon. Mr. Drea:** Mr. Warner, it was the vagueness of what you said you were reading from. I wanted to put the record straight. There was a study done in Ontario. There was a study done in the United States which is pretty well on the basis of the conclusions of the Ontario report. There was a night-club fire in Kentucky where an attempt was made to blame it on aluminum wiring. There was a class action suit resulting from that. It was thrown out of court.

Now you have brought up a fourth one. If you had said where this was in the first place, I would not have been confused. I am not quarrelling with what they are doing. You are talking about a number. I suggest to you, on the basis of things going on in the United States, it is somewhat helpful to know which report it is because there was an overall one.

**Mr. Warner:** I am sorry. I did not mean to bring any confusion to the matter. My two questions remain.

At this stage, what guarantees do the owners of houses which have aluminum wiring have with respect to liability? What liability will the province assume when any fire or problem occurs as a result of faulty aluminum wiring?

Secondly, has the province banned or does it intend to ban the use of aluminum wiring in new home construction? I obviously include in that apartments, factories and so on, all new construction which takes place within this province.

Those are the two specific questions I would appreciate having answered.

**Mr. Chairman:** Are there any further comments or questions on this? Then the minister can answer all three presentations and questions.

**Mr. Roy:** I have one brief comment. Did I hear you say something to the effect you had doubts whether the government of the United States had any concerns, or approved one doctor's report—

**Hon. Mr. Drea:** No, that was a case of the courts. A report was issued and the conclusions—they did a lengthy study—were virtually the same as the Wilson report. There are specific applications in litigation in the United States which have no application here, because they deal with aluminum-wiring receptacles and other techniques that were never allowed to be used in this province.

**Mr. Roy:** My information is that the US is still carrying on some cases against—what, 28 companies, pertaining to aluminum wiring? They are still carrying on those actions?

**Hon. Mr. Drea:** I think that was the last one he is mentioning. But there were other class actions prior to that. I thought he was talking about the report, not particular litigation. I am not suggesting at all that the United States government does not have concerns. They have a much lower standard and a great many products are allowed to be used there.

With the varying jurisdictional rights in the States, I do not think that in any way, shape or form, it would be possible to compare various state wiring codes with what is set in this province by Ontario Hydro. Some may be at our level, but in others, believe me, the code is much lower, and products are allowed to be used there in wiring and techniques are allowed to be used that were never allowed to be used here at all.

I think you raise a valid point. Quite frequently an American scientist will come up here and say he has found new things, that there is problem with aluminum wiring. And everyone gets excited. Then we go to see him and say, "What were you testing?" And this happened with one gentleman. "What were you testing?" And we say, "That is of no benefit to us here because we have never allowed that to be used. We could have told you without your test, with all due respect, sir, exactly what would happen because the tests by Hydro or CSA or what have you, some time ago said this particular method or device simply would not perform safely over a period of years."

Really, what you have to look at is the Wilson commission, which dealt strictly with Ontario. It is impossible, for instance, and I am sure you would recognize this from your own locale, to compare the wiring standards in Quebec with the wiring standard in



Ontario. I am not casting anything on the merits of either one, but they are remarkably different.

This is a problem in Canada—not a problem, but it is something that is indigenous to Canada, because only Alberta has the private sector in the electrical field. Traditionally it has been the public sector here, rather than varying trade associations or standards associations, that have set the levels. In the United States, that is certainly not true, because for practical purposes, at least at the local level, no public body is engaged in the distribution of electricity. That compounds it a bit more.

**Mr. Makarchuk:** I think, Mr. Minister, that you are not exactly correct—

**Mr. Chairman:** Mr. Roy has the floor. Would you carry on, and then Mr. Makarchuk.

**Mr. Roy:** Just so that I understand it; my understanding of the process is that an agency, or the government representing the consumers, is still carrying on actions against some 28 companies for the use of aluminum wiring. I appreciate that it may vary and that there are different standards there, but the fact is, that action is still going.

**Hon. Mr. Drea:** I am not questioning that in the district of Columbia case, they are. Others have failed, have been thrown out. I was talking about the report and the conclusions of the report, rather than certain litigation. And the problem with the litigation is, unless you read all the technical things, that much of what they are in litigation about in the federal courts is about products that are not used in Ontario; that is all I am saying, that those products were never allowed to be used.

**Mr. Makarchuk:** You can talk about standards, and there is no question that various standards apply. The standards would apply perhaps on the size of wire and the delivery systems and the fuse boxes, et cetera. But the point is where the problem really develops is in the bloody receptacle itself, and the equipment that goes into the receptacle is the same equipment here as it is in the United States. There is very little difference—  
5 p.m.

**Hon. Mr. Drea:** Mr. Makarchuk, it is remarkably different.

**Mr. Makarchuk:** The problem develops with a connection between the wire and either the plug-in device or the switch that you have in that receptacle.

**Hon. Mr. Drea:** Mr. Makarchuk, if I could answer your original question, perhaps we can get to this one. I want to answer your general question, and then Mr. Sisco and Mr. Yoneyama are going to answer some of the concerns that have been raised in particular. And we will get down to the fact that the receptacles used, even in the beginning here, were not identical to what were used and are still used in certain parts of the United States.

But I want to come to your main question. I think that is what you want answered.

**Mr. Makarchuk:** The main question is the connection between the wire and that screw that goes into that receptacle. That is where your problem is located, basically. That is where the problem persists. And the technology in that field is very similar. They still use screws except with the plug-ins and I am not sure whether they are using those or not. But that is where the problem develops.

No matter what you say about the standards and everything else, you were using, here in Canada, the type of equipment in these homes and the wires that created the corrosion, the tension, the things outlined by the member for Kitchener. You can talk about standards, you can talk about various other things, and there are differences, but in dealing with this problem you deal with the localized problem. It is in that receptacle, and you are not doing anything to control or cure that.

**Hon. Mr. Drea:** That is nonsense.

**Mr. Makarchuk:** It is not nonsense. The fact is that if you make a mistake, if you have a loose connection or an inadequate connection, et cetera, and you are using copper wire, the dangers of that receptacle heating up are much less than they would be with aluminum wire.

**Hon. Mr. Drea:** If you make a mistake.

**Mr. Makarchuk:** Of course. And they make mistakes, don't they? But the point is if you make a mistake, you can get away with it when using copper wire, but you can't get away with it using aluminum wire.

**Hon. Mr. Drea:** We will come to that in the detailed answer. You raised the question—well, not a question really, a suggestion—and I can see a lot of difficulties in it, but it intrigues me and I will look into it. But I only consider doing it, Mr. Makarchuk, in all fairness, after we have been assured that there has been a message into the homes.

It is one thing for the Bell telephone company to come around to the door and say, "We are going to change the jacks." It is another thing for an electrical inspector to

come around. I think you will find there is a fair bit more resistance.

But I must say that your approach—

**Mr. Breithaupt:** Especially when one is free, and the other one isn't.

**Hon. Mr. Drea:** Mr. Makarchuk, in fairness, left it wide open, and I must say I can see a couple of difficulties I would like to pursue. You mentioned people who were not—

**Mr. Makarchuk:** I think if you get students in community colleges, et cetera, who are taking some kind of electrical course or courses related to electricity, with an additional week's training they have enough knowledge to be able to remove that plastic plate, look in there and jiggle the wires around, see the connections, et cetera, and perhaps decide there is something wrong there. It is not that difficult; it is not that complicated.

**Hon. Mr. Drea:** I am not too sure I would want to go as far as having them remove the receptacles.

**Mr. Makarchuk:** Well, I suppose you teach them not to put their fingers in there; I think they would know that very well. And after they do it once or twice, they won't do it again.

**Hon. Mr. Drea:** But I want it to be very clear on the record, that the idea you put forward at least is a concept. I can see some difficulties and I suppose I could pick hairs all day long.

**Mr. Makarchuk:** As with any problem there are some difficulties, but that is why you are there, to resolve them.

**Hon. Mr. Drea:** But can I please just put it into the record that the concept you have put forward intrigues me? Notwithstanding that I see some difficulties in it—I am quite sure you do too—I want to take a very long look at that because my concern is exactly what yours is, after all of the work and the public controversy, et cetera.

I say this to the member for Scarborough-Ellesmere, in Scarborough there has been controversy for years, and yet, why are people not having their houses inspected? I draw to your attention that as a member you have talked about it. As a minister—and we are talking about our own back yard—the hydro companies have talked about it, and for some reason, even at the height of the controversy—and I am talking about the time of the Wilson report and right after it—there was hardly a great rush on inspections. As a matter of fact, I will tell you quite frankly, based upon the number of hydro inspectors

available and their distribution across the province, and having to allocate that expertise, we thought there would be a far more significant rush.

If you want to be very basic about it, when we first set up the Aluminum Wiring Resource Centre I forget how many phone lines we had and people to operate them. After the first couple of days it literally became a matter of playing cards, the phones were not ringing. This bothered us and we went out and used other approaches. As a matter of fact, just in test areas we went in and advertised because there was literally no response from the area. We knew there had to be some houses there and we went out and advertised extensively. Particularly in the Sault, I think it was, there was massive local advertising.

**Mr. Breithaupt:** Where the media also is concentrated.

**Hon. Mr. Drea:** Yes, I am talking about right in the Sault. If you put an ad in the Sault paper everybody in the Sault will read it; it is not Toronto.

No response. You get the idea that the workmanship in the Sault was much better, there were no problems, et cetera; I do not know.

What concerns me is exactly the point you make. It has to be someone coming through the front door to look at the receptacle before something happens. The idea intrigues me and I will pursue it and I will report back to you.

One of the things of benefit to us at the moment in this field is that because of the relatively slow pace of residential construction, the Hydro inspection staff is not as busy on new projects as traditionally it has been in the past, so we are able to call upon that type of manpower without slowing down. The one thing that should be made plain is whatever would have to be done would be done under the supervision of the technical auspices of Ontario Hydro.

**Mr. Makarchuk:** My concern, Mr. Minister, is that you should not allow this matter to rest because, as I said, the danger is there, the time is running out and, as I said earlier, somewhere you are going to have a tragedy and then you will be kicking your behind all over the riding.

**Hon. Mr. Drea:** Mr. Makarchuk, the truth of the matter is the time will never run out.

**Mr. Makarchuk:** The time is running out in terms of the safety of those receptacles, that is the point; the corrosion, the ageing

process which increases the problem is reaching that time when these things can start heating up and ignite.

**Hon. Mr. Drea:** Frankly too, not the least of it is the change in loads.

**Mr. Makarchuk:** Yes, that contributes to the problem.

**Hon. Mr. Drea:** Very significantly, because you may never have had trouble with a receptacle and, suddenly, you plug in the newest device, which is the electric rug cleaner. You would never have had difficulties with an electric lamp but you may have considerable difficulties now because of the much heavier load.

Coming to Mr. Warner's question, he was asking if the province will assume liability for any fire in connection with aluminum wiring. The answer to that obviously has to be no. First of all, in any fire in connection with anything in the home, the first liability is on the insurance.

For the sake of the record, it should be pointed out that the insurance rate for a home, whether it is copper wired or aluminum wired, is identical. And I know of no area where one product is substantially less reliable or substantially more hazardous than another where it is not reflected in the insurance rates; but here the rates are identical. As a matter of fact, the very people who have to pay out the claims do not ask you what type of wiring you have in your home. That is a bottom-line figure, because they are the people who are going to have to pay on the basis of a fire in your home.

5:10 p.m.

I suggest, Mr. Warner, virtually everyone who has a mortgage has fire insurance, because they have to have, at least up to the amount of the mortgage. Fire insurance on mortgaged buildings is fairly mandatory. I just put that little conclusion in.

I just want to say one thing in connection with that, this does not diminish our concern at all on the issue.

The second question was, are we going to ban it, is that not your question?

**Mr. Warner:** Yes. I would have assumed that you have already banned it for use in new construction.

**Hon. Mr. Drea:** No, on the basis of Dr. Wilson's report and his recommendations, Dr. Wilson sees no evidence that would call for that. I will read it.

"2(11) Recommended action in respect of wiring systems in new residential units." Page 161, the second paragraph: "A conclusion: To impose a total ban upon the future

use of aluminum wiring in residences would create worry in the minds of the large majority of householders with aluminum-wired houses who have had no trouble and would lower considerable the market value of their houses. Such a ban seems unnecessary in the light of the evidence presented. To prohibit aluminum wiring now when the problems with its use are recognized and are being overcome would halt development that may lead to cheaper and more reliable wiring systems in the future.

"Recommendation 9: Aluminum wiring should be continued to be authorized for use in residential branch circuit wiring of homes built in the future in Ontario."

**Mr. Warner:** Maybe that is why people have not responded. There is not the level of concern.

**Hon. Mr. Drea:** Mr. Warner, Dr. Wilson wanted the inspections done, but the inspection of your home had absolutely nothing to do with what Dr. Wilson wrote then, or with what Dr. Wilson or anybody else thinks now. It is based on the fact of having an inspection to make sure your wiring system is reliable.

I draw to your attention that we have never yet differentiated and we never will. We do not ask people what kind of wiring they have. As a matter of fact, one of the more interesting cases was a rather elderly lady who had copper wire in the house she had lived in for some 50 or 60 years, since she had had the house built. She said she was nervous about copper wire, would we come and inspect it? We will inspect any wire. The recommendations have no impact upon inspection at all.

**Mr. Warner:** It is very disappointing, quite frankly, because I think there is sufficient information available. I know the government is in a very tough spot because of the unfortunate way in which the CSA has behaved throughout this whole fiasco and the unfortunate way in which Ontario Hydro was involved in backfilling and backtracking through the whole procedure, but there is sufficient information. I think, to be fair, because I did toss in some confusion earlier inadvertently, I will put the exact title on record so as to clear up any confusion or mystery. I was referring earlier to what is called: "Technical report, April 20, 1979, national control study of relative risk of overheating of aluminum compared with copper-wired electrical receptacles in homes and laboratory; executive summary prepared for US Consumer Product Safety Commission, Washington, DC, by the Franklin Research



Centre." That is the document to which I was referring and obviously I had not explained myself properly and there was some confusion.

I have several very interesting documents. Following Dr. Wilson's report I received a very interesting summary from the Malta test station in Plains Road, New York; Mr. Aronstein.

**Hon. Mr. Drea:** Ah, Dr. Aronstein; you brought him up.

**Mr. Warner:** I do not want to take the time of the committee by reading the entire report but it certainly substantiates my claims that the Wilson report was wishy-washy. Dr. Wilson does not solve the problem for the 250,000 people who have aluminum wiring in their homes.

**Hon. Mr. Drea:** What has Dr. Aronstein done except support a consumers' group?

**Mr. Warner:** I will say, to be fair to the government, there is only one part of the government that has responded responsibly, in my view, and that is Ontario Housing Corporation which has refused to use aluminum wiring in its buildings any more. No one else in this government has moved on it.

I think there is sufficient evidence in to say you should ban the future use of aluminum wiring in this province. Second, because it is not the home owner's fault and because you cannot simply slough it off as being poor workmanship, when fires or other unfortunate things occur in homes due to aluminum wiring, the province should assume some responsibility and not simply leave the home owner to whatever insurance he may or may not have. I think those are two very basic things that need to have been done.

I understand the power of Ontario Hydro; they exerted it during the commission hearings. They are a pretty powerful bunch; they are certainly not within the—

**Hon. Mr. Drea:** With me?

**Mr. Warner:** No, not with you, you were not conducting the hearing; it was the Wilson hearing.

**Hon. Mr. Drea:** Are you suggesting that Hydro got Dr. Wilson to write a less than honest report?

**Mr. Warner:** No, but Ontario Hydro had its lawyer and researcher and whoever else there at the hearings and they managed to very nicely manipulate the hearings. They were the ones who were cross-examining. You will recall that.

**Hon. Mr. Drea:** I was not the minister.

**Mr. Warner:** Okay, I am sorry; I meant to launch into a mean attack. That item was raised in the House.

**Hon. Mr. Drea:** I was running prisons at the time.

**Mr. Warner:** At the time of the hearings the matter was raised on how Ontario Hydro was cross-examining witnesses, totally inappropriately. They were not conducting the hearings, Dr. Wilson was empowered to conduct the commission.

Why Ontario Hydro felt it should run the show, I have no idea, other than the fact that it seemed to me, there was a distinct appearance that they were trying to cover up something. That is what it appeared to be to me. Otherwise they should not have been manipulating those hearings. There is no way that their lawyer should have been cross-examining witnesses. It was totally inappropriate and should not have occurred.

**Mr. Williams:** Who do you think you are, Eddie Sargent?

**Mr. Warner:** I missed the performance this afternoon, I have not even caught up on the whole story there.

At any rate, I think this minister has the reputation, one of the few ministers, in my opinion, who has the reputation, deservedly, of taking action and following through when he says something—the word around is that if Frank Drea says that such and such is going to be done, it is done.

**Mr. Makarchuk:** Are you going to use that on your next campaign literature, Frank?

**Mr. Warner:** That is my opinion and I hold it. I will fight it out with my colleagues later.

**Hon. Mr. Drea:** Mr. Warner, excuse me for a moment. I recall a debate that took a long time here in a previous ministry, during the estimates, as to whether I was a nice guy or not. Whatever you want, can we get back to the point?

**Mr. Warner:** I remember that. You were determined not to be a nice guy and we all voted on it. I remember that one.

There are two things—and it is the last thing I am going to say; I do not want to spend any more time on it, other members want to get in—but I think there are two things this ministry could do which would very much help the people who have aluminum wiring in their homes and would help to raise the matter to the level of seriousness it deserves. I am not expert on human nature, but for whatever reason, people are not responding in huge numbers.



5:20 p.m.

Maybe Mr. Makarchuk has a bright idea. Maybe there are some other people who have bright ideas. But maybe one of the reasons is, as Dr. Wilson stated in his document, if he bans it then people will suddenly get worried. Those are the words in effect, in recommendation eight: people will get worried.

I think the matter is sufficiently serious that the minister should say: "We are not going to allow the use of aluminum wiring in new construction in this province. Second, we are going to make sure that no home owner is out of pocket because of a problem which he did not initiate. So, if there is a gap in insurance coverage, then the province is going to back that."

Hon. Mr. Drea: But there would be no insurance coverage. You only talk about insurance coverage after something happens. If something has not happened there is no liability.

Mr. Warner: That is what I am saying. In the unfortunate event of a fire caused by aluminum wiring—

Hon. Mr. Drea: How many fires have there been? Not in the United States, but in Ontario, as reported by the fire marshal, by Hydro, by all the people who have to do with it; how many have there been?

Mr. Warner: I have got a little problem with that because many of the fire departments were unwilling to classify. They would say, perhaps, "Faulty wiring," but they were unwilling to determine whether it was aluminum or copper. We went through this with, I could be mistaken, but I believe, Peel fire department—Peel or Brampton, one of those fire departments. Remember Mrs. Trimmer's letters about the fire department involvement, or lack of involvement?

Hon. Mr. Drea: Yes, we checked those out. Mr. Warner, I assure you that since the day the Wilson report came out, one of the things I have done as a minister is monitor, in co-operation with not only the Aluminum Wire Resource Centre—I think Mr. Norman Sisco deserves a great deal of credit on this—but also I have extremely good connections with the fire marshal's office in the Ministry of the Solicitor General, because in a great many of my responsibilities some of my people act as his agents, and vice-versa. We have monitored and monitored this business of fire for any reason. I do not care who put the stuff in or anything else—no quibbling. We are just not finding it.

I give you one example. There was a fire

in Mississauga, I believe. It was a very bad fire. The announcer on television said, "They are looking to see if this was caused by aluminum wiring."

Mr. Warner: I remember that.

Hon. Mr. Drea: Yes. The next day, we were out there like a shot. Okay? It was caused by an overheated pot on an electric stove.

Mr. Makarchuk: What kind of wire was leading to the stove?

Hon. Mr. Drea: I am not quarrelling with the TV coverage. They can say, "Somebody said at the time," and we said, "It may be," but we go out and we look. The fire marshal was out there, all of the professional investigators. Hydro was already there because it was an electrical fire.

Do you know that people still, today, accuse me of covering up that fire? I can show you all the reports you want—and I am not going to talk about fire up until the Wilson report; I am talking about since. There has been the greatest effort, even an extraordinary effort. The minute they see "electrical fire," they want to know what kind of wire, et cetera. Even this one involving the pot, because it was on an electric stove would, even without the notoriety of the TV coverage, have been investigated.

We are just not turning up that fire business that is so prevalent in the US reports. We are not turning up that kind of evidence.

I do not want to leave a question in anyone's mind. An overheated receptacle, whether it is copper, aluminum, or anything else is an obvious fire hazard if there is something close to it. As Ontario Hydro has pointed out if there is heat against a burnable substance or in near proximity to it, there is an obvious fire hazard. It is the same as if one leaves a lighted cigarette close to some material that will burn.

If people have additional evidence on fires or better techniques for the professionals, not only for the fire department, but for the fire marshal or whatever service is available, we are open. As long as there is a set of statistics out there, as long as people are worried, when they do not seem to be getting the results they anticipate then, no matter what one is getting, they tend to accuse one of covering up.

Mr. Warner: I do not think you have to wait for a fire to ban the use of aluminum wire.

Hon. Mr. Drea: I am not waiting for fires. When you say there are fires—

**Mr. Kerr:** We must have some reason to ban.

**Hon. Mr. Drea:** I have a report here from a very distinguished scientist. All right?

**Mr. Warner:** Yes.

**Hon. Mr. Drea:** No question about that.

**Mr. Warner:** I have a report from another scientist.

**Hon. Mr. Drea:** I would not bring up Dr. Aronstein. I really would not. If you want to table that, I do not care who you bring up. I just suggest that Dr. Aronstein, at the moment, is not the best to bring up.

**Mr. Breithaupt:** Why is that?

**Hon. Mr. Drea:** Mr. Murphy's consumer group, which fights very vehemently with me on this matter out in the Brampton area, has some profound views having, unfortunately, retained Dr. Aronstein.

You will recall your leader, on the basis of a letter Dr. Aronstein had written to me back in May or June, asked me why we were not taking advantage of his offer of help, why we had referred it to Hydro. I think you will recall.

I suggested, if he read the letter, that I was being hustled for a job. Subsequently, unfortunately, Dr. Aronstein's help was accepted by a consumer group which now finds itself in considerable financial difficulty.

All I want to say on Dr. Aronstein is he was brought to Toronto by a newspaper to do a seminar on how bad the Wilson report was. He came, but before he ever went to the seminar he had to get in touch with us to say there was some type of misunderstanding. He was not going to comment on the validity of this report at all because Dr. Wilson was prepared to go and confront him. Instead, he was going to talk about aluminum wire in general, which he did.

I do not know who made the mistake, but I can hardly see a major Toronto newspaper arranging for an expert from the United States with all of the transportation and service fees, et cetera, to come here. I leave that. I want to talk about the report for a moment and then you are perfectly free.

I think I have answered your questions. I am not going to change. There is a very eminent Ontario scientist whose credentials are beyond reproach, then and now, Dr. Tuzo Wilson. He was brought in as a one-man commission. He was not to do original research. He was to examine all the evidence available and, as a noted physical scientist, to evaluate it and draw conclusions.

One of the things in there was, should

aluminum wire be banned? Was it safe or unsafe? I can bore the committee no end by reading the order in council, but I think we all know his terms.

Dr. Wilson examined all the evidence, came to conclusions and put his name on them. I stand by the conclusions reached by that eminent Ontario scientist on the basis of all the evidence before him. It is a far-reaching document. It examines, in almost minute detail, all the issues. People may quarrel with his conclusions but, on the basis of the evidence, he made recommendations. It is a matter of record that the government accepted, almost instantly, every one of his recommendations.

5:30 p.m.

I know the member for Kitchener, the opposition critic, asked some time ago what the progress was. I said it would be tabled. I have given him a copy today. I regret it took so long to table, but it involved ministries other than mine. I moved heaven and earth to try and get it before the end of the last session. I think there is no change in the policy that, as the minister, I enunciated then.

Notwithstanding those things, Mr. Warner, I come back to what you are saying about action. I want the question of aluminum wire put to bed in a proper manner, once and for all, in the shortest period of time. I am striving for that.

I do not believe in allowing an issue, regardless of its merits, to continue to lie around. I am concerned about each one of those houses, whether it is 200,000 or 250,000. No one knows. It may be 300,000. I do not know. The report says it was an estimate. I am concerned about each and every one of those.

I assure you I do want something done and I am striving, as diligently as I can, not always, I will tell you this, with the overwhelming agreement of other ministries who have responsibility. So far my will has prevailed. Just leave it at that.

**Mr. Warner:** As the Speaker would say, we have a difference of opinion.

**Hon. Mr. Drea:** Yes. I think there is a basic difference of opinion. For reasons that are yours, and I respect them, you do not accept the conclusions of Dr. Wilson. For reasons I understand, because they are mine, I accept the conclusions of Dr. Wilson. That starts the cleavage right there.

**Mr. Breithaupt:** As the one who this afternoon raised this theme others have shared in, I appreciate the comments the minister has made, particularly with respect to the

use of the hydro billing service for another opportunity to deal with getting information across to people. I think that is going to be a useful step. I hope the response is as great as we all would prefer it to be.

I dare say your staff will have the opportunity to look at the other points I raised. If there are comments and considerations that would be of help, I am sure you will be able to get their comments to me.

Under this vote, if that has completed the discussion of aluminum wiring, at least for this afternoon, there was just one other theme I thought it would be worth while to spend a few moments on and we only have a few moments left. That is the current status of building codes, fire codes and other such circumstances.

We have noted in various press comments the concerns of various officials in the fire-fighting services with respect to certain standardization and the changes in the building code, the problems of window safety that are particularly and unfortunately brought to mind because of accidents to children, particularly in the metropolitan areas in high-rise buildings. Perhaps the minister would—

**Hon. Mr. Drea:** I would like to put that into perspective.

**Mr. Breithaupt:** Perhaps the minister would like to comment generally on that theme.

**Hon. Mr. Drea:** Just to put it into perspective, it is not the building code that is being questioned on the windows, because they are all in older buildings.

**Mr. Breithaupt:** Are you content with the safety standards of those screens and other windows in the newer buildings?

**Hon. Mr. Drea:** On the newer ones, I am sure Mr. Adams would answer. The complaints and problems they are having are with buildings erected before the building code. I am not trying to get away from the responsibility, but the building code—

**Mr. Breithaupt:** No, I am just interested in this point.

**Hon. Mr. Drea:** I will read these: "New buildings"—those are the ones regulated by the building code—and that "requires that opening windows in dwelling units in apartment buildings should have a latching device that will catch at four inches opening. This is capable of opening further if the catch is lifted, in order to give more ventilation.

"In addition, a window is required to have a screen that will withstand 75 pounds. Proposed code revisions are now being

developed to permit even further alternatives to minimize hazards at windows for small children.

"The existing buildings can be regulated by municipal bylaw, which has as its authority section 36, standards of maintenance and occupancy in the planning."

**Mr. Breithaupt:** I realize the municipal bylaw opportunity is there. Do you have any monitoring of information done with respect to communities that have taken advantage of upgrading their building bylaws to have repairs done or expected on the older high-rise apartment buildings where this seems to be the concern, or do you have no overview of that?

**Hon. Mr. Drea:** No.

**Mr. Breithaupt:** You would not know at this point.

**Hon. Mr. Drea:** In an overview, if the committee would permit me, I would like to put into perspective this whole thing, because it involves two existing acts and probably two future acts.

**Mr. Breithaupt:** Please do.

**Hon. Mr. Drea:** As you know, we are dealing with new buildings, older buildings and so forth. The building code only involves new buildings. There is a constant upgrading in that which seldom achieves much glamour because it is by design only, so there never is a controversy—new products or older products, or new designs, et cetera, which eliminate the use of certain products that might potentially be a health hazard. There is no cost because it is merely by design.

Then we come to the question you raised about the fire code. The fire code is probably not aptly described by those words because the fire code is really the building code for all existing buildings. There is considerable work under way. There are amendments before the House from the Solicitor General. There is work being done by the Ministry of the Solicitor General, the Ministry of Consumer and Commercial Relations and the Ministry of Housing in developing a more co-ordinated fire or existing buildings act. As I say, the first step is already on the order paper.

Then there is the matter of a rehabilitation code which we think is a very significant because of the thrust now to rehabilitate, not only older residences, but many older buildings. That is being worked on by ourselves and the Ministry of Housing.

**Mr. Breithaupt:** This would overcome any difficulties in bylaw unevenness in communities.



**Hon. Mr. Drea:** No, if I could just do the overview. This is the problem. Rehabilitation code means one is doing something. One is actually renovating. Now we come to the last one, the older building where one is not doing anything, just living in it and a retrofit code or retrofit provisions that would go into the fire code or existing building code, what have you. There is work being done by our ministry and by the Ministry of the Solicitor General particularly in consultation with the fire people. One of the real thrusts in retrofit and in the fire code is contents, much more so than structure. We are talking about the type of furniture or drapes. These are things in the age of substitution that are suddenly becoming very significant, as well as other changes. The Ministry of Housing is involved in that, for obvious reasons.

The retrofit code obviously is the significant one because, at certain times, one will be told one cannot wait until one renovates, one cannot wait until one sells, one is going to have to do this right now to continue occupancy. In the context of all those, this whole area of building safety, both old and new, is being upgraded, the building code itself by regulation and the other ones, first, by some legislation, and then proposed legislation that will be following.

I think the results of that should be seen relatively soon, particularly in the fire code. That is not just the amendments, but following through, probably by regulation, et cetera.

5:40 p.m.

The rehabilitation code will have to be formally legislated, although bolstered no end by regulations because most of the things one does, even in the building code, are by regulation and by consent and then, latterly, the retrofit code. The retrofit code is a peculiar one.

The municipal inspectors have long asked for status qualification or, indeed, certification. I am not talking about requests from the commissioner but from the people who actually do the inspections, who actually grant the permits, either for renovation, or for new construction, or what have you. I think this may be the most significant thing in the province since the introduction of the building code. I gave them a commitment at their convention in Thunder Bay on the opening day of this Legislature that, by their next annual meeting, there will be a certification program in effect.

Certainly, many of them will be grandfathered, but this certification program will involve self-paid-for courses by community colleges or other centres for new people coming into that municipal inspection area, so that they can pass their examinations and become qualified. As well, the private sector is going to be allowed to put their people into the same courses, so there will be an understanding at the municipal level as to all of these codes, not only the ones now, but the ones in the future. People will be talking the same language which we believe will end a lot of the friction and the arguments and provide for a more orderly, single interpretation right across the province.

When we have the delivery system primarily in the hands of the municipality or, at least, at the municipal level, that step will really facilitate the movement of these new codes towards that common goal of the safest possible structures and operating conditions that can be arrived at.

**Mr. Chairman:** We are going to have to call a vote, because of the time.

Vote 1503 agreed to.

The committee adjourned at 5:44 p.m.



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# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Friday, October 31, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, OCTOBER 31, 1980

The committee met at 11:45 a.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

**Mr. Chairman:** I recognize a quorum.

On vote 1505, property rights program:

**Mr. Breithaupt:** Thank you, Mr. Chairman. This morning we look into votes 1505 and 1506, which are two areas of the ministry that perhaps do not have the same profile as some of the others but are nevertheless most important and have a great responsibility for the work that is theirs. There are just a couple of questions—

**Hon. Mr. Drea:** They are not glamorous, but I have certainly done a lot of legislation for those areas. These are the Tuesday night bills when I think only you, the NDP critic, and myself are in the House. But you are right. They are very important.

**Mr. Breithaupt:** I presume that the list of 65 registry offices referred to in the vote is a total that has not been changed from the earlier—

**Hon. Mr. Drea:** Do you want it again for this year for the sake of your party? A couple of your members continue to write to me periodically. In all fairness, they do get correspondence from time to time. Perhaps there has been a bar association meeting and somewhere in the back of the room something has been mooted. It is so much nicer if they have a clear-cut Hansard to mail out, rather than having the assistant deputy type another answer.

When I became minister I said no office would close. Technically, I suppose, I reopened one, because the one in the town of Durham was in the courts at that time. The courts vindicated the right to close it, but as soon as the technicalities were over I included it in the list. The offices we have now will remain.

Indeed, since the last time we met we have added one, because the judicial district of York has been subdivided and became

the region of York—there was some difficulty over the name to avoid confusion—but in any event, the region of York has been a judicial district since the legislation was passed, which enabled our office to function. It replaced a partially existing one, but it is a very full office for the region of York and will take a burden off Toronto, particularly with the mounting number of transactions as more and more development, both commercial and residential, occurs in the region.

So it is firm policy that no existing office will be closed. Indeed if, for one reason or another, an area within the sphere of an existing office that has been relatively dormant or latent suddenly goes ahead because of a decision for a new plant, say, we are in a position to expand. I do not have any plans to expand at the moment, but it is not simply a question of not closing offices, or leaving the status quo. If there is need, obviously there will be further subdivisions.

**Mr. Breithaupt:** On page 137, productivity commitments, there is a reference I am not familiar with. Perhaps somebody could explain it. The reference is, “estimated weighted work load per man-day is 7.76 as compared to 1980-81 forecasted figure of 8.89...” I do not understand just what that means. I do not know whether I should be happy that it is increasing, or glad that it has not decreased.

Perhaps you could explain it to me.

**Mr. Crosbie:** In general terms what we have tried to do is to translate the work load involved in processing various documents or procedures into a numerical value. It is true that figure by itself does not mean anything, but on a comparative basis we can relate one year's productivity to the next because we have a numerical value. We try to translate all the work into man-days of work.

Perhaps Mr. Evans could give you a couple of examples specifically of how we have done that.

**Hon. Mr. Drea:** While we are just waiting, perhaps for the convenience of Hansard, Mr. Crosbie might introduce the other peo-

ple here in case there are questions relating to other aspects.

11:50 a.m.

**Mr. Crosbie:** We have Mr. Vern McCutcheon, who is the director of real property; Roy Evans, finance manager for the division; Tom Rundle, director of personal property branch; and Dick Priddle, who is the director of legal and survey standards.

**Mr. Evans:** With regard to the work-load statistics, instead of comparing apples with pears, or one type of registration which takes perhaps 10 minutes and another that takes half an hour, there was an attempt to relate these across the division so we could apply some sort of statistical balance and find comparable areas. It is very difficult to do this on a statistical basis without doing an awful lot of calculations.

We applied a very simple formula and set it to one particular year, and then we used that year as a base. If there are any inaccuracies with this method, they all relate back to the same base. In that way, its fairness relates to that particular year. We produced this management information system for the division, so the executive director could have across-the-board comparison from one branch to the next.

Within each branch we do have a slightly different statistic we use, but sometimes we still have to compare apples with oranges in relation to different types of registrations.

For instance, in land registration we have a land titles registration and a registration office registration, and there is quite a bit of difference in the work load for those two registrations. We calculated land titles took approximately a one third extra work load. Therefore, we apply one and one third to that particular registration when we are trying to calculate man-days, man-months or man-years for it. That is basically the method we use.

**Mr. Breithaupt:** Therefore we are to presume that 8.89, this increase of 15 per cent, is a good thing as opposed to a bad thing.

**Mr. Evans:** Yes. It is across the board, across the whole division; and it is a mixture of apples and pears, which is very difficult to make. But we do try to even things out so we can come to some sort of decision.

Yes, we are increasing across the whole division. Within the division itself there are four different areas, and one of those areas may be up and another down, but across the division, yes, it is good and we are quite proud of it.

**Mr. Crosbie:** I would like to comment further, Mr. Breithaupt. Where this becomes particularly valuable in the division is that in the current year the level of registrations has dropped considerably. I think the overall reduction is somewhere between 20 and 23 per cent.

At the same time we have backlogs of other work—remedial work, bringing our old abstract books up to date, culling documents from the files and updating the whole system—all related to Polaris, the province of Ontario land registration and identification system.

When I said culling documents from the files, if that is what caught your eye—

**Mrs. Campbell:** It did.

**Mr. Crosbie:** —I am referring to discharged mortgages that have been left on file and can legally be removed.

**Mr. Breithaupt:** They are ruled out.

**Mr. Crosbie:** Knowing what the work-load shifts are, not only in the division but in the various registry offices, we can better determine where we have to put special effort to pick up on backlog. Very often we can take the staff that are released from the drop-off in work load in the regular registrations and assign them to catching up with backlog. It is used as a management tool in that way.

**Mr. Breithaupt:** I can see that less apartment construction and fewer subdivisions reflect in the registration documentation, the preparation of plans and so on. It is certainly encouraging to see that the reflection of that in the operation of the registry offices allows you to see clearly the opportunities you have to attend to other matters. One does not get a chance to do those when registrations and other matters are going full steam ahead, but you have the opportunity now, I presume, to tidy up a number of things one does not get a chance to do in a developmental stage such as we saw in the late 1960s and early 1970s.

I have a couple more questions I could proceed to in this area unless Mr. Davison has something.

**Mr. M. N. Davison:** Why don't you continue along?

**Mr. Breithaupt:** All right, I just have a few more questions. I look at page 143 and we are dealing there with the size of the funds that have been developed with respect to the certification of titles and the land titles assurance fund. I suppose my question is, how much is enough?

I see we have had some additions to the certification of titles fund, which now stands at some \$300,000 and that is mainly an interest addition. The land titles fund, of course, which is over \$1 million, has had no payments shown added to it, but the land titles survey fund has \$60,000 again, which is mainly interest.

What are the plans with respect to these funds? Are they just going to develop based upon the interest amount assigned to them? And how large do you expect they are going to get? How much is going to be enough with respect to these three funds?

**Mr. Priddle:** The certification of titles assurance fund is formed by payments into the fund at the time applications are made for certificates of title. The amount paid is \$1 per \$1,000 on the combined value of lands and buildings with a maximum payment of \$300. That is the method by which this fund has been formed. The interest on the fund is turned back into the fund itself. There is no statutory limit to the amount it can reach at any time in the future.

The land titles assurance fund, on the other hand, is currently augmented only by direct payments from the consolidated revenue fund. There have been no payments made into the fund since 1967. Before that, there was likewise a formula related to the value of the land at the time the land was first registered under the Land Titles Act.

The interest on that fund is diverted and forms the land titles survey fund, so periodically this fund, which is normally stabilized at \$1 million, is reduced below the \$1 million by payments from it. When there is sufficient payment that the balance in the fund is reduced below \$1 million, there is a direction in the act that the executive council has to stipulate an amount to be paid into the fund to bring it above the \$1 million again.

Before the current formula and after the payment by applicants was dropped, there was a period during which, when the fund was reduced below the \$1 million, revenue from the land titles registrations was able to be diverted. On that basis either once, or perhaps twice—once, I think—one per cent of one year's revenue was diverted on the theory that the liability of the fund is incurred, not just at the time of the first registration but on a continuing basis and that more or less related to the liability of an insurer and warranted continuing or recurring premium.

The survey fund is formed entirely from interest on the land titles assurance fund and itself is used to subsidize survey costs largely, but in some cases also related ap-

plication costs, as for example, when a municipality applies to bring into the land titles system land that is currently in the registry system. At the same time a total survey is done and the fund is then used to offset the cost to the municipality and the owners of that sort of combined application.

**Mr. Breithaupt:** Is that offset fully or is it a proportionate share?

**Mr. Priddle:** No. It is offset normally to a percentage between 25 and 40 per cent. The upper level was normally on the basis that the municipality qualified as being a depressed area. The balance which the municipality undertook would be assessed back against the properties, probably as to 25 per cent of the total, over a period and the remaining amount the municipality has committed itself to would be paid out of their general funds.

12 noon

We have phased out that program—we still have a few that have not been completely wound up—because we found the cost was very high and we also found that survey estimates were completely unreliable. We would get ourselves into a position where, in one or two cases, we had a survey estimate in the order of \$16,000 but by the time the project was completed it was up around \$80,000 to \$90,000, and our commitment had only been 25 per cent of the initial amount. Then we would get the municipality having to come back and say, "We understood we were only going to be committed for 75 per cent of the initial \$16,000 and now we find we are in trouble."

In some of those cases we have renegotiated the amounts and in fact have been successful in some cases in getting surveyors to reduce their final billing to somewhat less than their tariff had called for. The problem here is that I think there is a reluctance, and perhaps even a canon of ethics, if you will, by the surveying profession not to give binding estimates for this kind of work. They do it on a per diem basis and the amount of work involved.

**Mr. Breithaupt:** So we have the circumstance where there are no new payments into the land titles assurance fund and the interest is diverted into the survey fund, the money you have on hand, presuming therefore that the \$1 million is a sufficient cushion for any claims that might or might not be expected. Under the certification of titles assurance fund that money is simply going to be allowed to accumulate through its own interest for some time to come.



**Mr. Priddle:** Yes, that is true. The only areas at the moment where the certification of titles process is compulsory are areas where the land titles system is not available and a condominium plan is being registered. Apart from that, anyone in the province with land in the registry system may apply for a certificate of title, but there is no compulsion, other than condominium plans, in non-land-titles areas. So the number of applications under that act currently is quite small.

**Mr. Breithaupt:** I see at page 146 under this vote there have been no claims made under the personal property assurance fund so far, and when one looks at the balance of the fund at page 148 we have about \$2 million sitting in this fund.

Again my question would be, how much is enough? What are your plans with respect to continuing the charges as part of the registration cost of 20 cents? I presume that means 20 cents and not one fifth of a cent. It shows 0.20 cents, which, of course, should have been 0.20 dollars. In any event, I suppose that cost might eventually not be diverted in the fund and used for other purposes, rather than an increase of fees at some point.

Is \$2 million enough? Just what are your plans with respect to that?

**Mr. Rundle:** When I appeared before this committee last year on this issue I indicated that I hoped in the very near future the ministry would be making a decision on the approach to be taken with respect to the Corporation Securities Registration Act and, when that decision was made, we would also make a decision on what to do with the assurance fund.

In the interim, a study has been undertaken and a draft bill has been prepared and circulated to the legal profession and the business community. That draft bill proposes that the Corporation Securities Registration Act will be repealed and the Personal Property Security Act applied to corporation securities.

It also provides for doing away with the assurance fund completely and have those moneys that are part of the general fund now remain and become available as general revenue. A limit will be imposed on the amount of a claim that can be made directly from the general revenue fund through the procedures available under the Personal Property Security Act.

The consequence will be that a person having a claim greater than that will have to proceed under the Proceedings Against the Crown Act in the normal way.

**Mr. Breithaupt:** What maximum figure have you set?

**Mr. Rundle:** The maximum we have set is \$25,000 for a claim by any one person.

**Mr. Breithaupt:** It will be interesting to see how that legislation does develop if it is finally brought before the Legislature.

That, I think, completes the questions I have in the overview. I see that Mr. Williams is here and no doubt he will have an interest in the continuing Polaris development as he had the last time the estimates came before us, but I am quite happy to turn the matter over to Mr. Davison if he has any questions at the moment.

**Mr. M. N. Davison:** I have a few questions following along from Mr. Breithaupt's questions and a few of my own. The first one concerns the rather substantial increase in the expenditures by the administrative component of this program. In 1978-79 the administrative component spent a grand total of \$364,781, and the estimates for last year were similar, but this year you have jumped up to something in excess of \$1 million.

I assume there is a reasonable and nearly obvious reason for this. Perhaps you will let me know what it is.

**Mr. Evans:** My name is Roy Evans, manager of finance for the division.

One of the major points for the increase here is, of course, the Polaris project. The Polaris project is funded for this fiscal year for approximately \$689,000, and that reflects back to the figure you can see at the top here, and it shows in the explanation of the major changes, \$689,200, nonrecurring project.

**Mr. M. N. Davison:** Is that the total expenditure for Polaris?

**Mr. Evans:** For the Polaris budget for this fiscal year.

**Mr. M. N. Davison:** And that comes out of the first part of this vote?

**Mr. Evans:** Yes.

**Mr. M. N. Davison:** I take it that to see the Polaris project through you took on staff or almost doubled the administrative staff in one year?

**Mr. Evans:** The Polaris project is a separate project entirely. We started it initially in this area, under this vote item, because it was sort of an add-on to the division itself. It is now a separate and autonomous project which will still be within the division itself in the future, but will not appear, I do not think, under this particular vote. It should be a separate one.



**Mr. M. N. Davison:** But do the people for the Polaris project come from other parts of the ministry or were they people from outside?

**Mr. Evans:** Both; some from outside and some from within the ministry itself.

**Mr. M. N. Davison:** Also in that same vote your services went from \$10,300 to \$267,500, which is a whopping increase, I take it almost totally put against the Polaris projects.

**Mr. Evans:** Correct.

**Mr. M. N. Davison:** The other area where I had a question about increases in funding was in item 2, real property registration, and that, under the heading services, also showed a dramatic increase, this time from something over \$300,000 to almost \$1 million—actually \$949,000, an increase of something over \$600,000.

What did that relate to? It is page 138 of the briefing book and it is vote 1505, item 2, real property registration. The particular concern is services. It is a very dramatic escalation which, I take it, had nothing to do with Polaris.

**Mr. Evans:** The real property branch had a total increase of \$1,286,300.

12:10 p.m.

**Mr. M. N. Davison:** Six hundred thousand of that in services?

**Mr. Evans:** Yes, and \$998,000 of that is actually in salary increases and merit awards.

There was a general shuffling of funds between services and salaries which may account for the amount you are seeing there.

**Mr. M. N. Davison:** Does that mean you were contracting out?

**Mr. Evans:** No, salary increases and merit awards are the normal increases which take place each year within the civil service on salaries.

**Mr. M. N. Davison:** I am obviously misunderstanding the accounting system. I assumed when we talked about salaries, wages and benefits, those would come under the titles "salaries and wages" and "employee benefits."

**Mr. Evans:** That is correct.

**Mr. M. N. Davison:** So if there was an increase, which there was, of half a million dollars, it would be accounted for there. My query is about the item "services," which increased over \$600,000, which I assume has nothing to do with salary and staffing levels but has to do with the amount of paper you

are shuffling about the office, or did you buy a new computer?

**Mr. Evans:** No.

**Hon. Mr. Drea:** With great credit to the branch, the entire Polaris project—I take it you do not want to do the Polaris project today—all of the funds for that are being absorbed internally by the branch.

**Mr. M. N. Davison:** In item 1; but I am on to item 2 now.

**Mr. Breithaupt:** The minister was out for a moment when the first question arose. If I may summarize, it was explained the increase of some \$700,000 at page 134 was accounted for by the nonrecurring Polaris project. Now we see a further \$629,000 increase in services under real property registration. I think the detail of that particular item was the subject of discussion. The minister, being out, perhaps was not aware of that.

**Hon. Mr. Drea:** The deputy, Mr. Crosbie.

**Mr. Crosbie:** We were uncertain when this budget was prepared for us some few months ago. At that time, rather than anticipating a turndown, which has now occurred, they were anticipating an increase in work load and that additional money would have been used, perhaps, for contract to other services related to the work load increase.

That money is put there on the uncertainty of work load. In fact, it has not occurred. Most of that money would have been transferred out of the division now, either surrendered up as part of the government constraint program or applied in this reallocation of our backlog work load.

**Mr. M. N. Davison:** It is considerable padding, but I can understand if it is to purchase the services of human beings which come reasonably high.

**Mr. Crosbie:** Yes.

**Mr. M. N. Davison:** Why, in terms of accounting though, would that padding not appear under salaries and wages? Is it normal procedure in your accounting to put contract staff under services?

**Mr. Crosbie:** It depends how one hires. If one is hiring consulting services, people who are consultants on a contract basis of that kind, it comes under services. If one is hiring on an employment contract, it would be under wages and salaries, as you have suggested.

**Mr. M. N. Davison:** You did have a substantial increase in work load, did you not?

Mr. Crosbie: No, our work load has fallen off.

Mr. M. N. Davison: I am obviously misreading figures. I somewhere found a 15 per cent increase in work load.

Mr. Crosbie: Not in the current year. That may have been the projection; that was fat.

Mr. M. N. Davison: Fifteen was the projection.

Mr. Crosbie: Instead of the historic increase we had been experiencing, because of the turnaround, it has fallen off rather than increased.

Hon. Mr. Drea: The most dramatic example, of course, is Windsor. We were planning to expand an already expanded office because of the large number of transactions not only in Windsor, but in Essex county.

At the time it was projected no one had any reason to believe it would halt because there had been a steady pattern that had to do with the new Ford Motor Company plant, et cetera. Those projections, through reasons beyond the ability of the person projecting, have not been there.

Mr. M. N. Davison: Let me go back to the productivity figures. Mr. Breithaupt raised the matter of the actual for 1979-80 being 7.76 compared with the 1980-81 forecasts of 8.89. That was an error in terms of forecasting.

Hon. Mr. Drea: No.

Mr. Breithaupt: That is an efficiency measurement, is it not?

Mr. M. N. Davison: Are productivity and work load that closely related?

Hon. Mr. Drea: Not the way they were doing it. It was a weighted average, because some types of the operation took longer to do than others.

Mr. Crosbie: In our operation we have a certain amount of flexibility where if we have a heavy work load we can bring in contract people to pick it up. Their individual productivity will not be affected by the fact they have been brought in for two months; and you are talking about their productivity.

The fact our work load goes down and we do not have to hire as many part-time employees leaves the productivity of the balance of the staff unchanged.

Mr. M. N. Davison: If work load decreases and staff remains the same, how can productivity increase?

Hon. Mr. Drea: They are not all doing the same thing. It is not like something coming

across a counter where everything should take 10 minutes. Some types of registration take much longer. There may not be a downturn in those. There may be a downturn reflected in the relatively simple operation. That is why we try to give a weighted average. That is for our own internal purposes.

I understand what you are saying. You are saying: "Look, there are 100,000 registrations or conveyances coming across. This year you are only doing 80,000 and you have the same number of people. How can you possibly have any increase in productivity? It should automatically diminish."

It depends upon the type of document. I am quite prepared to say, in a relatively small office, where things are static and do not increase from year to year and where one has to have employees because one has to have the office, productivity does suffer a bit.

But in very intensive offices, for instance Hamilton, one must achieve more productivity in that operation, at least the weighted average of productivity internally, or one is not going to be able to provide the service people expect.

Mr. Crosbie: Could I explain further, Mr. Minister? As I mentioned earlier, Mr. Davison, a lot of work goes on in a registry office other than what occurs at the registration desk. If there is a heavy work load of actual registration coming in and all hands are at the front end of the operation, things like microfilming, collation of books, the repair of old books, get put to one side.

For example, in the current year because of changes in the expenditure levels associated with the fall-off of work, something like \$288,000 out of original funding of the division that was for normal work load will now be used for backlog in just book collation. The registry offices in Toronto will spend another \$77,000 on backlog in microfilming which they would have normally spent up front.

Those people, although they may not be doing the same work because of the fall-off in work load, are still being productively used and their effectiveness is still there.

Hon. Mr. Drea: For instance, in our office in Hamilton, if we did not have a single conveyancing document come across the table in this entire year, we could still show you a productivity increase because all of the microfilming for virtually the entire southern segment is done in the Hamilton office. That is why we try to get that weighted average in there, because there are

things other than the physical pieces of paper coming across the front counter.

Secondly, there are far more than title searches. Indeed, one might have an office where, for one reason or another, suddenly there is a very concentrated survey. I do not mean a survey within the meaning of the act, but suddenly they want to look at deed extracts over a wide range. Providing that type of service is not as measurable, I suppose, as a retail operation and its warehouse, because in a retail operation one cannot necessarily suspend the warehouse part just because one has a crowd up front.

I think the weighted average is of some significance because hitherto one really could not get an idea of the productivity. One was always dealing in ball-park figures. The reason the productivity is significant is that one is able to reallocate resources from within rather than having to go outside on an ad hoc basis.

12:20 p.m.

**Mr. M. N. Davison:** Looking through your forecast figures over the past couple of years supplied in this book, I can see you have trouble with forecasting in this part of the ministry. I guess there is not a great deal you can do about that to change it. I am still not totally satisfied about the budgeting process used in the budget of services under that vote.

Sometime after the estimates—as soon as you can, but I assume it will take a while to get—would you provide myself and Mr. Breithaupt, if he likes, with the actual forecasts of budgets and the actual expenditures on particular items over, say, the last three years so we can try to get a handle on how it is you develop your planning and to what extent—

**Hon. Mr. Drea:** Five might be better.

**Mr. M. N. Davison:** Sure, okay. That way I would feel a lot more comfortable with it.

**Hon. Mr. Drea:** Not to spread it out or anything, but I think in certain parts of the province in 1977 there were some rather unusual developments—

**Mr. M. N. Davison:** I think that would probably put my mind to rest.

**Hon. Mr. Drea:** —particularly in Essex county, which would tend to distort a little bit.

**Mr. M. N. Davison:** The other two questions I have deal with boards and committees under this part of the ministry.

First, the Bar Association Users' Committee: Could you tell me what it does?

**Hon. Mr. Drea:** I think Mr. Priddle would be—

**Mr. M. N. Davison:** Is Mr. Priddle one of the ministry representatives on the committee?

**Hon. Mr. Drea:** Yes.

**Mr. Priddle:** The so-called user committee began in the winter of 1972-73, resulting from an offer made by the minister of the day, the Honourable Eric Winkler. By the time the then newly-formed real property section of the Canadian Bar Association, Ontario section, responded, the minister changed and I think it was John Clement who actually met with the group the first time.

It was by agreement that the committee was formed to represent the practising members of the legal profession so we might have some ongoing liaison with them and they could air their pet beefs and we could tell them of our proposals and so on.

The committee was later increased by adding two representatives of the York County Law Association and one representative of the benchers of the Law Society of Upper Canada. There now are a minimum of six members, three from the Canadian Bar Association and the other three as mentioned.

In addition, from time to time we have had what might be called regional representation. We currently have one member from Ottawa and another member—I think from Hamilton, I'm not sure—who may or may not also be with the Canadian Bar Association.

The meetings are held during the period from September to June normally on the second Tuesday of each month, which coincides with the evening meeting of the Canadian Bar Association, real property section.

From our point of view, the committee itself is those who meet with us. We are not properly members of the committee but representatives of the ministry. Therefore, the agenda is normally formed by the committee, with some involvement by ourselves. They will let us know in advance what they would like to have on the agenda. If we have anything to add, we add it.

Quite often we will mention we propose to do something, perhaps in legislation, so that we get some reaction before we go too far with it. A good example of that might be the requirement under section 43a of the Registry Act for so-called Planning Act affidavits. That was supported by the committee and we now propose to go ahead with proclaiming the section in force next spring.



**Mr. M. N. Davison:** Would it be unfair to say, then, that their essential purpose in life is to act as a sounding board for ministry ideas, to act as a lobby group for their interest?

**Mr. Priddle:** At the time it was formed, most of the problems from the point of view of the profession were not problems with the way the law was or the regulations, but practical things like the backlog in the Toronto land titles office. The tone of the meeting, or the agenda, has gradually shifted, and although we still deal from time to time with problems of that sort it has tended to be in the past a largely legalistic kind of agenda. We talk about peculiar problems of a legal nature. The tendency over the past three or four years has been for the administrative problems to form only a minimal part of the agenda.

**Mr. M. N. Davison:** What is the remuneration for the nonministry people?

**Mr. Priddle:** There is absolutely none from our point of view. They are on a purely voluntary basis.

**Mr. M. N. Davison:** There are some committees, in fact very many committees in the province, that do not have remuneration.

**Hon. Mr. Drea:** I did not want to interrupt the legalistic end of it or the agenda, but the best catch phrase or cliché is that this is an ongoing dialogue, they are as much a sounding board for us as we are for them.

There is also, Mr. Davison, the very practical problem of how services in various offices, et cetera, are a great benefit sometimes to the ordinary person. If these people can demonstrate that our service is delaying the closing of deals, which is of detriment in extra fees in the buying or conveyancing of homes or businesses, or what have you, we can do things. But there is no money at all to those involved.

**Mr. M. N. Davison:** The meetings, I take it, are evening meetings?

**Mr. Priddle:** No, they are held on Tuesday afternoons at two o'clock. Most of those people, if they are out-of-towners, are in town for a meeting of the Canadian Bar Association anyway.

**Mr. M. N. Davison:** Which is only once a year?

**Mr. Priddle:** No, once a month; that is the real property section of the Canadian bar.

**Mr. M. N. Davison:** I see, so it is always on the same day.

**Mr. Priddle:** Yes. It happens that next month the second Tuesday is November 11

so we decided this month to skip that one meeting

**Mr. M. N. Davison:** Do they report to the minister in any way?

**Mr. Priddle:** Not in a formal way, not that I am aware of.

**Mr. Crosbie:** Only in the sense that we refer a problem to them and they come up with recommendations, then they come back to us.

**Mr. M. N. Davison:** Have they ever supplied you with a written report?

**Mr. Priddle:** In fact, the secretary of the users' committee takes notes and they are circulated to the members of the real property section of the Canadian Bar Association, along with, I might say, copies of the bulletins we issue to the land registrars.

**Mr. M. N. Davison:** Can I get copies of, say, the minutes of the last three or four meetings of that committee?

**Hon. Mr. Drea:** Sure.

**Mr. M. N. Davison:** It will make enjoyable reading late one evening.

**Hon. Mr. Drea:** One thing I want to point out is that these are invariably very senior practitioners of the profession, and when we say there is no pay from us, that is only one side of the coin. I think the measure would really have to be that these people, at considerable sacrifice of their professional or their private time, I do not really think it matters which it is, are willing to serve in an ongoing dialogue with the regulatory body of government so that the delivery service particularly will be as efficient as possible. I think the bar and that users' committee deserve a very substantial amount of credit.

These are things that sometimes the public forgets and, as the critic for the Liberal Party mentioned this morning, these items are not the glamorous or the headline part of government and yet are important to virtually every single person in the province, and far more important than some of the things that do get the glamour treatment. So they deserve a great deal of credit for this.

12:30 p.m.

**Mr. M. N. Davison:** These appointments are made through orders in council on the minister's recommendation.

**Hon. Mr. Drea:** No.

**Mr. M. N. Davison:** They are made by the bar association itself.

**Hon. Mr. Drea:** They find people who are interested and who will serve. Just as we have committees.



For instance, dealing with the Business Corporations Act, they are the people in the bar association who are considered by the bar itself to have the expertise they can contribute, and secondly are able to contribute their time more or less regularly. It is not a two-hour meeting once a year. Quite frequently, if somebody, because of the peculiarities of their practice, is going to be in court for a period of time, or is tied up on something else, they will drop out. But somebody else comes on. So it is not the "formal" type of a government agency or what have you.

**Mr. M. N. Davison:** Very briefly, the Minister's Advisory Committee on the Personal Property Security Act: What are their responsibilities?

**Hon. Mr. Drea:** The Catzman committee; it falls into precisely the same category.

**Mr. M. N. Davison:** Except that they represent a broader segment of society. They hate all lawyers.

**Hon. Mr. Drea:** Well no, because there are some very practical things. In the one case, it is strictly a matter for the profession.

**Mr. Rundle:** The Catzman committee met, as you probably know, over a number of years, and, in the first instance, developed the legislation on a purely voluntary basis. They started their deliberations in the late 1950s and over those many years and many evening and weekend meetings developed the legislation.

Latterly, they have continued, slightly reconstituted, as an advisory committee, directly to the minister, and they do receive remuneration to the extent of \$75 per person per meeting. The meetings are evening meetings. Normally they have one meeting a week, but during the time we have been working on this draft bill dealing with the Corporation Securities Registration Act, they have been having two, three and four meetings a month.

**Mr. M. N. Davison:** What is the selection process?

**Mr. Rundle:** The original committee approached the minister directly to see if he would have them continue as an advisory committee to himself. He agreed to do so, and he confirmed the membership of the committee. There have been no changes since then.

**Mr. M. N. Davison:** Is that done by order in council?

**Mr. Rundle:** No.

**Mr. M. N. Davison:** How is it done? What is the statutory basis upon which those appointments are made?

**Mr. Rundle:** There is no statutory authority.

**Mr. M. N. Davison:** How can you pay out money from the funds of the Ontario government through the ministry without any statutory basis for doing so?

**Mr. Rundle:** I am not sure that I can answer that question.

**Mr. M. N. Davison:** It is a rather interesting question. I would like to have it answered.

**Mr. Crosbie:** I do not think that it is entirely accurate to say there is no statutory authority. The provision of the funds is included in this budget, and the budget is approved by statute. So it is the same way in which we go out and obtain the services of a lawyer to provide advice on any matter. We would enter into an arrangement with the lawyer and—

**Mr. M. N. Davison:** When that is done, when you contract out or when you hire staff, you do so under certain conventions and certain requirements. Do you want to tell me what the conventions and requirements are here?

**Mr. Crosbie:** As Mr. Rundle pointed out, we started off with a voluntary committee—I guess it was one or two ministers ago, I am not quite sure of the exact time the decision was made. Because of the amount of time that was being required, as Mr. Rundle has pointed out, it ceased to be once a month; we were getting into some very heavy involvement of their time. On occasion, they would have to meet to consider the legislation two or three times in a relatively short period. So a decision was made to provide a per diem remuneration. Now in terms of a contract, they are providing their services, advising on the preparation of this very important legislation.

**Mr. M. N. Davison:** Has the provincial auditor ever asked you specific questions about this expenditure of funds, to the best of your recollection?

**Mr. Crosbie:** No, he has not.

**Mr. M. N. Davison:** The committee meets on evenings and weekends. Where does it meet on the weekend?

**Mr. Rundle:** It does not meet on weekends now, or has not for some time, but it did originally when it dealt with the legislation.

**Mr. M. N. Davison:** And now it just meets on evenings? Over dinner?

**Mr. Rundle:** No.

**Mr. M. N. Davison:** After dinner?

**Mr. Rundle:** The meetings start at seven o'clock.

**Mr. M. N. Davison:** The committee reports by what mechanism to the minister?

**Mr. Rundle:** At the present time the deliberations are in the form of a draft bill. That has been circulated to the legal profession.

**Mr. M. N. Davison:** I am just trying to understand how that constitutes a reporting mechanism.

**Hon. Mr. Drea:** They report it to the minister prior to the decision—

**Mr. M. N. Davison:** Do they report by way of supplying the minister with copies of their minutes, for example?

**Hon. Mr. Drea:** Yes.

**Mr. M. N. Davison:** Could I also have copies of the minutes of the past four or five meetings of that committee?

**Hon. Mr. Drea:** Sure. There was a decision based upon those minutes and upon personal meetings. As a matter of fact, they reported personally to the minister on this persistent question of the Corporation Securities Registration Act, which I am sure you are aware has been cast into some doubt by an as yet so far unreported case of Mr. Justice Lerner, notwithstanding the fact that, to the best of my knowledge, it is still not reported.

**Mr. M. N. Davison:** I have taken up a great deal of time. The final request I would have—

**Hon. Mr. Drea:** In any event we are proceeding into the corporate securities field to try to correct that area of doubt. And that is very, very significant.

Part of your problem is, you say: "Well, why do you need the Catzman people in this? Surely, Mr. Minister, you can make up your own mind."

I draw your attention to the law reform commission reports of the 1960s, which created or led to the present impasse, or one impasse, in senior legal thinking in the province; one was a government-commissioned report, the second was by the people who are actually out there, to try to bring this matter to a head.

The Lerner decision of some months ago made it very acute, and when the steps were taken towards the recommendation that the ministry proceed with legislation, which is the draft bill that has been referred to, the Catzman committee met with the minister—

not over dinner but at some length and some duration—and from there on the decision was made by the minister to proceed. Their draft bill is at present in one form or another, because it is evolving in consultations at subcabinet level.

**Mr. M. N. Davison:** The concern I have is that these people cannot have a meeting that does not cost the taxpayers at least \$500. I would like to see tabled before the committee the financial records of this committee for the last three years, or five if the minister agrees.

**Hon. Mr. Drea:** I do not know what the thing is about it at least costing \$500, but whatever it cost it is the cheapest expenditure this province could have.

**Mr. M. N. Davison:** You have seven guys at \$75 a head.

**Hon. Mr. Drea:** If you want to take a committee of this Legislature around this province, which would be the alternative, it would cost \$78 a day per member, plus the travel expenses and everything else to sound out all of the views of the legal practitioners in the corporate securities field. I think that might put the investment of the Catzman committee into perspective.

**Mr. M. N. Davison:** I would like to know what the investment is.

**Hon. Mr. Drea:** You will find out.

**Mr. M. N. Davison:** Thank you.

**Mr. Crosbie:** There is one further point on that which should be borne in mind, and that is by having this contact we are frequently in touch with them. If a problem comes up, we have people whom we can contact and bounce ideas off. It is not a formal meeting and you are probably getting top dollar advice with no charge at all. We are doing that all the time with these representatives.

**Mr. M. N. Davison:** Frankly, I have a different sense of values about money coming from the riding I represent. There are not a hell of a lot of people in my riding who get \$75 to sit down for a couple of hours and talk to the minister. So perhaps I am not so good at putting a dollar value on the contribution of these fine fellows.

**Hon. Mr. Drea:** Once again, not being a lawyer, I do not have to defend the profession, but I would draw to your attention that the accepted fee for contracted-out or independent legal services, is \$75 an hour. This is \$75 a meeting. If it is a four-hour meeting those are expenditures.—

12:40 p.m.

**Mr. M. N. Davison:** A member of the assembly gets \$52.

**Hon. Mr. Drea:** —or charges that I doubt very much if the tariff committee of the Law Society of Upper Canada would be exactly in ecstasy about it.

**Mrs. Campbell:** During the estimates of the Attorney General (Mr. McMurtry) I expressed a great deal of concern that Ontario, in this time of our mobile society, had continued to retain in legislation the power of sale under mortgages. The Attorney General undertook to look into the matter. I gave him a specific case.

My question to the minister is has there been any discussion between this minister and the Attorney General on that matter? I believe we are one of the few jurisdictions which has retained the power of sale. Second, is there anyone here who can give us any experience as to that operation in the registration of documents at this point?

I would draw to your attention that the case I gave was of an elderly couple who had mailed post-dated cheques because they were going to Florida. Because of a mail disruption the cheques were not received. They returned home to find their property had been sold under the power of sale. I was advised—and I do not have the staff to investigate—that in reading that title it was discovered here were several transactions on that same matter in one day.

I wondered whether that kind of transaction has come to the attention of those dealing with the registration of documents at the registry office in Toronto or in any of the surrounding areas.

**Mr. Crosbie:** Mrs. Campbell, I just checked with the staff and we are not familiar with this case. Would there have been something about it that would make it different from a normal foreclosure action, a power of sale?

**Mrs. Campbell:** A foreclosure action and a power of sale are two different things.

**Mr. Crosbie:** Granted, but would the registration documents that came into the registry office be any different in this case from a normal one? If they are not, our staff could deal with them and have no way of identifying this as one where perhaps it should not be occurring.

**Mrs. Campbell:** I was not suggesting it was unusual. That was my whole point to the Attorney General. My concern is that in a mobile society such as ours people may very well not receive any notice. People move because of employment conditions.

My real request is that since I addressed it to the Attorney General—and appropri-

ately, for legislation purposes—I thought he might have made some investigation, or asked that some investigation be made as to the number of these transactions and what actually was occurring under power of sale, I believe it was Mr. Campbell who said they could put somebody on it. I have heard nothing and I am concerned.

If you have not been asked about it, is it possible the minister might enter into some discussion with the Attorney General and perhaps do some kind of an investigation so we could have a report for legislation purposes?

**Hon. Mr. Drea:** I will report back to you. I will give you an interim report on Wednesday. It would be my view that we are not the primary jurisdiction, but we certainly have some jurisdiction at the end.

**Mrs. Campbell:** You are the ones who would give the information to the Attorney General.

**Hon. Mr. Drea:** I will bring you up to date on what has transpired by Wednesday. I do not know the circumstances, but quite often when the Ministry of the Attorney General mentions the word "investigation" and it has the primary jurisdiction, it does the investigation or whatever actual work has to be done and presents the results to us, rather than asking us to do the investigation and consult with it. The final consultation is a little bit later than in some other matters.

I will check into it and see where we are going on it and bring you up to date on Wednesday.

**Mrs. Campbell:** Thank you.

**Mr. Williams:** I appreciate that someone has shown an interest in the Polaris program, although Mr. Davison was not particularly interested in the overall progress of the program other than the financial aspects of it. I think Mr. Evans dealt adequately with those questions about the \$600 million.

I would be interested in having an update and an overall review of how the program is progressing in the time left available to us. I find it an interesting program. I expressed some interest in it during your previous estimates and I think it would be appropriate to bring us up to date.

**Hon. Mr. Drea:** May we do some introductions for Hansard?

**Mr. Crosbie:** We have Mr. Norman Harris, who is the project director of Polaris, and with him is Mr. Bob Blomsma, who is manager of legal services for the project.



**Mr. Williams:** My question is whether we could have an update on the Polaris. Although we had some earlier questions on the financial aspects of the project that were of particular interest to Mr. Davison, I do have a broader interest in the project so perhaps Mr. Harris and Mr. Blomsma could give us the benefit of that report.

**Mr. Harris:** Could I just point out I was hired as director on July 7 of this year and at that time Mr. Blomsma and the manager of the survey aspects of the project were on site? Since that time we have hired, either directly or through seconding other staff, or on contract, so we have a total of 15 people at present in the four major areas of the project.

In the legal area, to direct our activities towards the improvement of the legal package we have three lawyers working for Mr. Blomsma on one-year contracts. The reason we have selected contracts is to ensure we do not overstaff in the longer term, because the legal aspects peak in the next year.

**Mr. Williams:** What are those three lawyers doing specifically in pulling together the legal package at this time, and why is it you just have them on the one-year contract?

**Mr. Blomsma:** Actually, we expect the majority of the legal work will take four people close to two years, but we have to deal on a one-year contract basis. There will be some ongoing work after that.

Right now we are working on a bill we hope will be introduced in the spring, the main aim of which will be to accomplish some large time savings for users and our staff through a couple of things. One is a reduction in the search period in the registry system, which is currently 40 years. We are looking at reducing that to 25 years.

**Mr. Williams:** Is there any particular reason you arbitrarily selected 25, rather than any other time?

**Mr. Blomsma:** I say 25 because what comes to mind immediately is that most claims will not have to be reregistered. Most mortgages are for short terms now and that is the main type of client to worry about. If the period is too short, one gets more and more registrations because people have to be allowed to reregister to protect their interests. There is a point beyond which the registration work load nullifies the effect of the savings one achieves in shortening the search period.

12:50 p.m.

**Mr. Williams:** This has been the suggested and perhaps preferred new time frame, but this has not been—

**Mr. Blomsma:** It has not been finalized. That is part of the research work taking place now.

One of the other things we hope to do is change the laws with respect to discharges of mortgages and other documents like mechanics' liens to make them immediately effective. As you know, currently there is a 10-year period after a discharge gets registered in which one has to examine both the mortgage and the discharge.

**Mr. Breithaupt:** Before they are ruled off the record.

**Mr. Blomsma:** No, they do not even have to be ruled off any more, but there is still a cumulative effect. Millions and millions of documents across the system end up getting examined every year and if we were able to change the rules to adopt the land titles rule there would be a large and immediate saving in clerical work.

It has not caused us any trouble. There has been no particular problem with the way things are going in titles. That is not one of the problem areas in that system.

**Mr. Breithaupt:** Just the pulling and the filing of those documents.

**Mr. Blomsma:** That is for the staff, but savings to the users are four to five times what they are to the staff.

**Mr. Williams:** You are comparing it to the land titles system, are you, where that repetitive situation does not arise?

**Mr. Blomsma:** We are also working on a plan to certify the title to plans already registered in the registry system.

**Mr. Breithaupt:** So you do not need to go find the plan.

**Mr. Blomsma:** That is right.

**Mr. Breithaupt:** That would be a great help.

**Mr. Williams:** Do you not have that now under the Certification of Titles Act?

**Mr. Blomsma:** No. I think Mr. Priddle has already mentioned there is no compulsory aspect under the Certification of Titles Act. The only time it is compulsory is for condominiums in areas where no land titles are yet available. In areas where land titles are available, plans have to go under the Land Titles Act.

One of the things we are proposing to do for new plans is to make certification mandatory in areas where land titles are not available, so the title problems are solved for new plans throughout the system.



**Mr. Williams:** Solved as far as going behind the plans is concerned.

**Mr. Blomsma:** Yes.

**Mr. Harris:** Would you like me to continue with other aspects of the project?

**Mr. Williams:** Yes. Are those the two or three major areas in which you are looking for ways of streamlining the system?

**Mr. Blomsma:** There are other things. We propose to streamline and shorten documents, review the number of affidavits currently being used and include on the title record the number of claims that are presently unregistered which cause lawyers a lot of trouble. But this looks like the thing that could help both the system and the users most quickly; this is the quickest one, I believe, within the available system.

**Mr. Harris:** In the area of surveying, we have a survey manager who has been with the project for some time and, as recently as this week, we hired two surveyors to work on the project on a full-time basis, primarily in the area of property mapping, which is one of the major parts of Polaris, as well as in document and microfilm work and in plan microfilm aspects of the project.

In the area of operations we have hired an operations manager whose job will be to ensure the implementation goes right through to the end user in the land registry office. The project is set up so that Polaris is an agent of change for registry business, rather than providing certain products, you might say, and handing them to someone hoping they work. It is actually to ensure the implementation.

The fourth position on Polaris is the manager of systems. That is a much more difficult position to fill at this time, primarily because the number of people on the market who can fill that kind of role are few at this time. It is a tight market and we are actively trying to recruit for that position. We think we have a candidate who could fulfill the rather awesome duties in that area over the next few years.

If I could tell you about the three projects we are working on at the present time: One is the plan microfilming, and we have done the first phase of that study. The ministry uses a methodology called PRIDE, profitable information by design, which tries to minimize risk as one develops these implementation packages. At every reasonable point there is a review meeting with the users of the system. That takes place between the Polaris team and the land registry business. With them, we are now looking at the infor-

mation requirements that have been identified for that project. We will do that with a number of other projects to ensure the input of the land registry business.

We are also undertaking the major planning of the project to go from the concepts report, which is a fairly general document, down to the detailed planning, particularly in the next fiscal year, on the major parts of the project. We are trying to break it down into manageable parts. One of the difficulties with Polaris is it is a highly integrated project and that is why the disciplines are all put together in one area.

**Mr. Williams:** In the couple of minutes left to us, I would like to come back to the surveying area of the program. I think I raised this question last year as well, as to what extent we are trying, on an across-the-board or universal basis, to introduce the grid system of surveying that seems to be in use so successfully in other jurisdictions.

This is not a system used as extensively in Ontario, as far as I am aware, as in places like the Maritimes. I recall it was considered to be—I will not say a superior system, but one that has a lot of advantages. A greater degree of accuracy is built into the same process, as far as I am aware, and I am wondering what approach is being taken at this time.

**Mr. Harris:** Perhaps Tom Seawright could address this aspect.

**Mr. Seawright:** My name is Tom Seawright. I am deputy director of the legal and survey standards branch. The co-ordinate control system is going to be one of the components of the property plans the project is preparing.

**Mr. Williams:** The co-ordinate control system is the predominant system that would be recommended for use on a standardized basis throughout by the surveying profession, is that what you are saying, it is tied in with the whole program?

**Mr. Seawright:** Property plans, I understand, will be based on base mapping, which in turn is based on the co-ordinate control system.

**Mr. Williams:** To what extent do you liaise with the surveyors' association in pulling together this program? It will only work if these people are, if not directed by statute at least prepared to use the one type of system. Is the long-range intent to go to the co-ordinate control system, the grid system of surveying, rather than the systems being used at present?

**Mr. Seawright:** The legislation for the co-ordinate control system is actually under

the jurisdiction of the Ministry of Natural Resources, under the Surveys Act.

**Mr. Williams:** There may be disadvantages if they are only on the one type of system, and there may be an advantage to using the other, traditional, surveying techniques that have been used to date. I wonder, having made these assessments, what the position of your team would be in making recommendations in this regard.

**Mr. Seawright:** Actually, the co-ordinate control systems are a basic mathematical framework for all surveys and the densification of that system is, I am sure, one of the things the Polaris team is going to have to think about.

**Mr. Harris:** I might add that with the arrival of the two new surveyors we are setting up a team to start addressing those issues.

**Mr. Williams:** I see. You are really in the preliminary stages.  
1 p.m.

**Mr. Harris:** Yes, it is actually at the preliminary stage now, and with the addition of this staff we intend to set up the project that even precedes the "Let's get on with it, design it and do it" phase. We intend to try to narrow down the definition of the problem and also to look at the changes that have taken place in technology.

**Mr. Williams:** Do you have a representative from the surveyors' association involved with your planning on this?

**Mr. Harris:** Not at this time.

**Mr. Williams:** Is there any ongoing consultation with them on it?

**Mr. Harris:** We plan to have consultation. In all of these packages we plan to make sure there is enough input from the people who will be affected prior to any hard decisions being made.

**Mr. Williams:** Fine. Thanks very much.

**Mr. Chairman:** If it please the committee, we only have one question indicated for the next vote and, therefore, I wonder if we might carry this vote and move on to the next.

**Hon. Mr. Drea:** May I just have 15 seconds on this vote? I meant to draw attention to this before because I consider it a rather significant development, particularly for Hamilton.

Within the next five to six months we will be moving from our present overcrowded quarters in the courthouse—which will also free up much-needed resources for proper courtroom work—into new quarters. I think it is also significant that the acting registrar in

Hamilton, Ms. Virginia Matuzzi, will, at the time of the opening, be registrar.

The critic of the Liberal Party will recognize significant improvements to facilities in the Waterloo region. As I did not want the New Democratic Party critic to feel left out, it is fitting to mention that Ms. Matuzzi will be the registrar in Hamilton. That is a very significant registry office in scope, in dimensions and in a number of other ways, and I think it underscores the career opportunities available for females in this area of government. It is quite true there have been a number of female registrars before, but certainly not on this scope.

Interjection.

**Hon. Mr. Drea:** Of course, Mr. Davison will be invited.

Vote 1505 agreed to.

On vote 1506, registrar general program:

**Mr. Breithaupt:** I just have one inquiry of the ministry. Before that, I want to comment upon something which I think all members have shared, that is urgent requests by constituents to obtain birth certificates or other kinds of documentation.

In my experience over these past 13 years, invariably there has been a prompt, immediate response. The convenience to a person who is about to take a trip or to obtain a passport or whatever has always in some mysterious way been made a top priority, and the documents come through promptly and get back to the constituency office or to the individual in the mail without any delay.

This area is not often given the profile of various other aspects of government, but it is a most important one. Matters are attended to promptly and efficiently and I think it is a great convenience to all the members with the last-minute requests we occasionally get.

My question is with respect to an involvement I do not recall having been completed, and that is the ongoing request of the Scientologists to have their clergy perform marriages. This was an issue last time we were before the committee. Does the minister have any further comment to make on that particular area?

**Hon. Mr. Drea:** The discussions with the Scientology organization are continuing and I am prepared to table correspondence. There are some fundamental questions which are very germane to their application on which we have asked for additional data. We are waiting for that additional data to be provided.

The data that is germane concerns the question of the Scientology organization be-

ing a church within the meaning of the act.

**Mr. Breithaupt:** I appreciate that comment, Mr. Minister. I was aware, of course, of this 25-year theme that has been one of the aspects of—

**Hon. Mr. Drea:** I do not mean to mislead or to have someone draw improper conclusions. The question of the 25 years is not the one on which additional data is being provided.

**Mr. Breithaupt:** I realize that. I was just going to say I recognize there is a question.

**Hon. Mr. Drea:** There is a question in the public mind that somehow there is a challenge on the dates. I do not want to get into that.

**Mr. Breithaupt:** I did not expect that was a major point.

**Hon. Mr. Drea:** Somehow, out in the world—I do not know why—there is some question about it. The fundamental question that has to be answered in order for us to proceed involves the additional data on “church,” but not within the meaning of the 25-year business.

**Mr. Breithaupt:** I understand that. Are there other groups awaiting approval for their clergy to perform marriages or other such acts, or is the Scientology group the only outstanding applicant in this area?

**Hon. Mr. Drea:** No, there are some others. I do not know whether Mr. Pike, the deputy registrar, has received a formal communication but there is one at the moment where there have been informal representations made, but only on the 25-year rule.

I think it fair to say that in the course of a year we might get two or three inquiries, but these are not in the same category. They invariably are people who were ordained in what is, for purposes of the act, a recognized church but who dissociate themselves from that church, continue their ministry without

the auspices of that church and maintain that they are entitled to continue their ability to marry.

**Mr. Breithaupt:** Perhaps they have even taken a congregation with them from a group.

**Hon. Mr. Drea:** There is one of those right now. I do not know whether there has been a formal communication, but it has been made informally to me.

**Mr. Breithaupt:** That does happen in this day and age, I guess.

**Hon. Mr. Drea:** Yes, it happens. It used to be happening in the fundamentalist churches. The one on which the informal representations have been made to me now is with a very old and established major denomination, and relates to the interpretation of the 25-year rule. The interpretation has been that when you formally leave the discipline of the church in which you were ordained and carry on a ministry that is independent of that and not affiliated with another church that is recognized for the purposes of the act, you commence, from the moment of departure, to work on the 25-year rule.

If you are asking if any group is coming in to be defined as a church where the question of 25 years is not paramount, I would have to say the answer is no.

**Mr. Breithaupt:** That is most interesting.

**Hon. Mr. Drea:** At this time, to the best of my knowledge, there is nothing else.

Bear in mind too that sometimes there is confusion. Someone will come into the province on an independent ministry, if you want to call it that, who does have merit, usually involving reciprocity. He will have had that particular church in another province for a long period of time and it is a case of the normal courtesy given to an accredited clergyman. That is a little different matter.

Vote 1506 agreed to.

The committee adjourned at 1:13 p.m.

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**From the Ministry of Consumer and Commercial Relations:**

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Crosbie, D. A., Deputy Minister

Evans, R., Finance Manager and Administrator, Finance and Administration Group

Harris, N., Director, Polaris Project

Priddle, R. E., Director, Legal and Survey Standards Branch

Rundle, T. M., Branch Director and Registrar, Personal Property Security Registration

Seawright, T. C., Deputy Director, Legal and Survey Standards Branch









No. J-24

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Wednesday, November 5, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, NOVEMBER 5, 1980

The committee met at 10:13 a.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

**Mr. Chairman:** I will recognize a quorum. The committee agreed unanimously to open vote 1502 again. Mr. Renwick and Mrs. Campbell had a couple of questions that we agreed to deal with under this.

Mr. Breithaupt has asked the attention of the chair to bring up one quick item with the committee before I turn it over to Mr. Renwick.

**Mr. Breithaupt:** Mr. Chairman, I am just concerned with respect to our procedure on Bill 118, the Registered Insurance Brokers Act. I presume that these ministry estimates will finish on Friday and then the estimates of the Ministry of the Solicitor General will be before the committee. I believe a children's bill is standing before the committee, although I don't know when it was to have been dealt with.

**Mrs. Campbell:** December, I think.

**Mr. Breithaupt:** In December.

**Mrs. Campbell:** Is that not correct?

**Mr. Chairman:** We are having problems in terms of the children's bill because of the difficulty of the minister with his schedule. I have now asked our clerk, in the light of some correspondence I have had only yesterday, to contact the government House leader (Mr. Wells) and see if we can sort out some of the scheduling problems and bring back a recommendation to me that I will present to the committee.

**Mr. Breithaupt:** What I was concerned about since we completed the second reading debate yesterday was to ensure that the bill does find an opportunity to be dealt with before the committee. In speaking with the minister, and I am sure he can speak for himself on this matter—

**Mrs. Campbell:** As always.

**Mr. Breithaupt:**—his schedule for later in the month would make it preferable if this bill were dealt with before the Solicitor General's estimates. I think it will take probably a day in committee, and I am wondering if the committee can agree to proceed with that bill next Wednesday. If it took a bit of additional time—of course, next week is an otherwise short week—we would have the opportunity Wednesday morning and perhaps Thursday afternoon, as well—or whatever time is needed—to get that bill attended to before the Solicitor General's estimates.

It would also give us the opportunity—since I am sure the member for Hamilton Centre (Mr. M. N. Davison) and the minister and I all have received a number of calls and letters from people who are interested—to get information off to them today. They might find it appropriate to be here within the week as we go through the committee stage. If it were thought that some greater time was needed to advise people, then that would have to be considered. But I will be able to contact today the half dozen people I know of who are concerned and advise them of the bill's proceeding, if such is the case.

**Mr. Chairman:** If I may make a suggestion to you and to other members of the committee, Mr. Breithaupt, since the Solicitor General (Mr. McMurtry) cannot be here on November 12, which is Wednesday, I can recommend one of two possible courses of action. One is that we could sit on Wednesday and ask that we sit all day on that, with the permission of the committee; or that we could sit on Wednesday morning as scheduled and, with the permission of the committee, put back the estimates one day. We would therefore sit Wednesday morning and Thursday after orders, and deal with the bill at that time.

**Mr. Breithaupt:** That would certainly be excellent as far as I am concerned. I realize there may be scheduling problems for the Solicitor General. I don't want to interfere with anything that may have already been

arranged, but I do think there is the opportunity to deal with the bill at some convenience during next week. It may be convenient for the Solicitor General's estimates to begin the following Wednesday.

**Mr. Chairman:** There are two suggestions, and I will have to hear from the committee on one of those two choices.

**Mr. M. N. Davison:** With the greatest of respect, Mr. Chairman, I am not a member of your committee, but I would suggest there are other alternatives. I don't have a real sense of urgency about the speedy passage of the bill. I think it is reasonable to hope that the bill will be dealt with in this session, and I can see no reason why it can't or won't be. I don't think it has to be dealt—

**Mr. Breithaupt:** Five weeks.

**Mr. M. N. Davison:** Yes. I don't think it has to be dealt with next week.

My concern is this: I have taken the position since June 6 this year that it is necessary for the bill to go to committee so that people in the industry will have a chance to come before a committee of the assembly to explain to us their concerns about it.

I think it is important that we, as a committee of the assembly, make some attempt to notify people in the industry of our existence and of our work on this bill. Frankly, I don't think we, as a committee, can do that in a week. Mr. Breithaupt and I and the minister can perhaps get in touch with people who have contacted us, but I am sure there may be other people in the industry who haven't been in contact with the two opposition critics. I think it would be wise to agree today to do some kind of advertising, or whatever is the proper way for a committee to reach that constituency, and go ahead with the bill in three weeks' time.

**Mr. Chairman:** All right. The other alternative might be to do it on November 19, which is another day the Solicitor General is not free.

**Mrs. Campbell:** I just have one concern, Mr. Chairman. As you know, I have been dealing with the Attorney General (Mr. McMurry) on the children's bill, and I had understood we had made a firm commitment on that bill.

**Mr. Breithaupt:** To a specific date?

**Mrs. Campbell:** Yes. What was the date we had for the children's bill?

10:20 a.m.

**Clerk of the Committee:** The subcommittee proposed that we meet commencing Decem-

ber 3, but there is a problem because of the four days the Solicitor General can't be with us.

**Mrs. Campbell:** All I wanted was not to be put in a false position with the Attorney General on his bill, because I was the one who said I felt it has some problems. In speaking with Mr. Campbell about it, I said that so far as I knew there was no problem with the fact it would be dealt with as scheduled in early December.

I know the bill has problems because (a) we have to have the new bill on abductions which meets the Hague Convention; and (b), there is still the jurisdictional question as it relates to family court, which will be in the Supreme Court in December, I think. I didn't see an urgency for the bill, but I did tell them I thought as far as I knew it would be dealt with at the beginning of December.

I feel there is some obligation for the committee to let them know if there is to be some change. They were anxious to get it to the House this session.

**Mr. Breithaupt:** The difficulty there is that if we do not proceed the next week, and if there are approximately two weeks of estimates for the Solicitor General and your bill is dealt with in the first week in December, we would be very hard pressed to deal with the insurance bill if we are put over to the last week.

**Mr. Chairman:** May I make a proposal, and I think this will satisfy all of the concerns; that is, that we deal with Bill 118 on Wednesday, November 19, and Friday, November 21. That will meet with Mr. Davison's concern that we have adequate time to advise everybody who is interested, and it meets with Mrs. Campbell's concern that we are not in any way interfering with Mr. McMurry's bill—

**Mrs. Campbell:** It is not my concern, it is his, and my representations to him.

**Mr. Chairman:** The minister advises me that he is free to deal with it at that time.

**Mr. Breithaupt:** Will that be the morning of November 19 and, if necessary, November 21 in the morning?

**Mr. Chairman:** Our clerk will advise everyone. I think it is advisable if Mr. Davison, Mrs. Campbell or Mr. Breithaupt or any of the other critics who have any people they feel should be advised and invited to appear or be present for Bill 118, will please advise the clerk of their names and we will send a letter to them.

**Mr. M. N. Davison:** Does that mean the committee won't do any advertising?

**Mr. Chairman:** It means we won't do any advertising unless you move a motion to that effect.

**Mr. M. N. Davison:** I can't move a motion, Mr. Chairman, but if I could I would move that the committee advertise. I don't know how else we reach that constituency in its entirety.

**Mr. Breithaupt:** What kind of advertising would you think would be suitable to reach that group?

**Mr. M. N. Davison:** I know absolutely nothing about these things, but I think we have an obligation to find a mechanism to reach that group of people.

**Mr. Chairman:** Mr. Davison, would you agree that an ad placed in the Financial Post would be sufficient to reach the community that is concerned about it?

**Hon. Mr. Drea:** If I may be of assistance, Mr. Chairman, the insurance agents of Ontario are having a provincial convention this week. We will make sure it is announced while they are all there.

**Mr. Chairman:** If it is announced there, then there is hardly a need to spend money on advertising in the papers.

**Mr. M. N. Davison:** I think that is quite suitable.

**Mr. Breithaupt:** The only other thing that might be useful would be for the clerk to be advised, perhaps by the minister's office, of the consumers' association addresses. Mrs. Anderson and others have been interested in insurance, and perhaps letters could go out. I think that would cover the consumers, or at least individuals that I know who have had an interest in this.

**Hon. Mr. Drea:** They have a representative to the Registered Insurance Brokers of Ontario; so they would be perfectly aware of it.

**Mr. Chairman:** Fine. Instead of advertising, I will ask the clerk to send several copies of the bill to the convention with a letter from the committee advising that we are prepared to have representations on those two dates.

**Hon. Mr. Drea:** They already know we're going into committee.

On vote 1502, commercial standards program; item 1, securities:

**Mr. Renwick:** Mr. Chairman, I have just three matters and I appreciate the courtesy of the committee in agreeing to recall the

Ontario Securities Commission and the courtesy of the ministry in arranging for their appearance before the committee.

First of all, may I personally, and I trust on behalf of the committee, welcome the new chairman of the securities commission. I have known him for a long time, and we are fortunate that he is to be the chairman of the commission for the next while.

**Hon. Mr. Drea:** Before you start, Mr. Renwick, perhaps they could introduce themselves.

**Mr. Knowles:** I am Henry Knowles, chairman of the Ontario Securities Commission.

**Mr. Bray:** My name is Harry Bray, I am vice-chairman.

**Mr. Salter:** I am Charles Salter, director of the Ontario Securities Commission.

**Mr. Renwick:** I just have three matters, and one is a minor one. There was an ad in the paper over the weekend which appeared to me to be a solicitation of subscriptions to a new show on Broadway. I would hope the staff of the commission would check the weekend paper. It was either in the Star or the Globe.

**Hon. Mr. Drea:** Which show was it, do you remember?

**Mr. Renwick:** There is no problem about its bona fides. Donald Sutherland is going to appear in a new production of Nabakov's *Lolita*. It appeared to me to be a solicitation invitation to the Ontario public to subscribe for a participation in that show. I would also be interested to have the commission write for a copy of the prospectus that was referred to in the ad. I am not raising this as a matter of criticism; I am simply asking if it is the kind of thing the commission was aware of and, if not, should it be aware of it, and is there a public implication here? Perhaps the commission would let me know about that in due course.

The second matter is that some of my colleagues in our caucus—and other caucuses, I am sure—because of the statement of the Minister of Industry and Tourism (Mr. Grossman), are very much concerned about the control of Stelco and, if it is controlled, where the control now resides. Secondly, with the tremendous turnover in shares, where are the shares being traded? Has there been a significant drift to the United States? Is there any indication that, if someone wants to gain control of that organization, we will find that it is now in the United States?

I ask this particularly of the minister: Is it not now advisable that either this Legisla-



ture, if it has jurisdiction to pass legislation or, if this Legislature does not have jurisdiction, the federal Parliament, should be requested as a matter of extreme urgency to pass the same kind of legislation that we passed in this assembly about 10 years ago with respect to the loan and trust corporations? That provided that transfers of more than 10 per cent of the stock had to be done to Canadian residents to ensure continuing control of the company. The actual provisions of the Loan and Trust Corporations Act are in the Revised Statutes of Ontario, 1970, and there are seven or eight sections dealing with that specific problem.

10:30 a.m.

I think the analogy is quite clear for a company such as Stelco. As far as Ontario is concerned, Algoma Steel and Dofasco are equally important in that role. I would shudder to think it is going to be too late to find that the control of that basic industry of Canada, let alone Ontario, has passed elsewhere. I would be interested to know the extent of the commission's knowledge of those matters and, secondly, the carefully expressed limitations on that knowledge so that we will have a clear picture of what I perceive to be an urgent matter.

I raise the third matter simply because I have a continuing interest—as I said to Mr. Salter a while ago—when the big boys are playing hardball, I think we little fellows ought to know what the hell is happening through the commission in connection with the attempt to take over control of the Royal Trust Company and whether the responses were adequate and satisfactory; whether there is anything of urgent concern with respect to the defensive tactics taken by the management of the Royal Trust Company to prevent the takeover or to abort it in its wide circle of very influential financial institutions. So far as I could tell from the press reports, Mr. Campeau and the Campeau Corporation adhered to all the rules of the game, but if they did not, if I am incorrect in that, perhaps you could comment on that part of it.

**Mr. Knowles:** Dealing with the first point, Mr. Renwick, in connection with the advertisement in the newspaper. I was not personally aware of the advertisement until you drew it to my attention. The staff at the commission does review periodicals to see if there are improper solicitations in our territory of Ontario. On that specific one we will ask, when we go back, if they have seen it; if they have not seen it, we will ask them

to review it. It would be an offence to solicit up here without clearing it with the OSC in advance.

**Hon. Mr. Drea:** The reason I asked you for the name of the show is that we have had difficulties with proposed fundings. I take it this is a New York stage production.

**Mr. Knowles:** A New York stage production; right.

**Hon. Mr. Drea:** We have had difficulties in the past. One of them led to some rather wild accusations that we were discriminating deliberately against them. The truth of the matter is that some of the prospectuses they want approved in regard to the financing of Broadway shows are a straight gift to the producer or whoever is putting it on.

One of the great difficulties in this whole field, Mr. Renwick, in terms of the prospectus is the unwillingness of the original backers of the show to want to share anything with the investors. Compounding it is the difficulty in certain types of approvals being granted elsewhere which pay absolutely no attention to the residual rights; in other words, when you see a prospectus whereby the original investors have no opportunity to share in or are specifically excluded from any film rights, from any TV rights, or indeed when they split off into travelling shows. It is in an area I think the commission has handled well in the past.

One of the problems in the backing of Broadway shows is the federal government's policy with a lot of tax concessions and so forth in the film industry. That is why I asked you the name. I wondered if it was the other one coming back again, that we were anti-Canadian and so on. The commission never viewed the matter. On the original prospectus, there was no way an investor could get his money back even if the thing were a marvelous success. Not even if it was *Gone With the Wind* again, was there a reasonable chance for the investor to get back the money.

**Mr. Renwick:** Mr. Chairman, I appreciate the minister's comments. When I saw it, no suspicions went through my mind at all. It sounded to me to be quite a legitimate investment. I was just curious because, if in New York state they required a prospectus with respect to the soliciting of subscriptions, I would like to know whether there would not be some method, on a reciprocal basis through the various exchanges, to let people know if they are going to advertise in Toronto newspapers or elsewhere in Ontario that they



should be in touch with the securities commission here so we could protect the public to the extent possible against the kind of thing you are speaking about. But I want to emphasize that it did appear to me to be a legitimate good investors' type of advertisement, and there was nothing garish about it at all.

**Mr. Knowles:** In that connection, Mr. Renwick, we are also going to be looking at the responsibility of the newspapers in the province to determine which ads should be carried or not carried. We have not formulated any policy on that but we are looking into it.

Dealing, if I may, Mr. Chairman, with the Stelco questions raised by Mr. Renwick: He stated the law in Ontario does not require the disclosure of the nationality of the purchaser of the securities of a nonconstraining company. Stelco is not a constraining company. The OSC does not at the moment consider it part of its mandate to screen the identity of the purchasers' nationalities. We have no legislation that would enable us to do so or to claim such jurisdiction.

Our mandate does go to the quantity of stock held by individual purchasers. As you are aware, sir, when the threshold of 10 per cent—the accumulation of voting securities—is obtained, it is required that an insider trading report be filed on the 10th day of the month following acquisition. No reports filed at this time indicate there is a 10 per cent shareholder of Stelco as a result of the recent activity in the stock.

As a result of the recent activity in the stock of Stelco, the OSC asked its enforcement branch to examine the trading and received the co-operation of the investment community to determine whether there was any improper or start of accumulation of a takeover. Our investigations or examinations to date indicate that is not taking place. We are satisfied that, on the state of the law at the moment, there has been no proposed takeover for Stelco, nor the mounting of an attack to take over Stelco.

The reports for the trading in October, up to the 10 per cent limitation, obviously are not due until November 10. Going beyond that, there are accelerated trading report requirements, if you get up in the 20 per cent range, which require reporting. I believe it is within three days of meeting that threshold. We have had no such reports there.

On the assumption that the parties acquiring the securities are complying with the

law of our jurisdiction, we are satisfied at this moment there is not a takeover attempt being made for the stock of Stelco.

In connection with the concerns you mentioned to the minister, it is our present belief that those are the concerns of the minister and of this House and of the other parliamentary institutions, to look into whether foreigners should be accumulating stocks of our corporations. We would simply have to say that is over in the political arena. It is certainly not a regulatory matter at the moment.

One of your last questions, sir, was the extent of shareholdings. If shareholders do not break the threshold of reporting requirements as insiders, we do not go down and review the individual share ledgers of the various reporting issuers. We have neither the funds nor the staff to do so; nor do we have the statutory mandate to do so at the moment. So the identity of shareholders below that 10 per cent threshold is not known to us. The accumulation of stock by non-Canadian nationals is in some respects governed by the Foreign Investment Review Agency requirements of the federal government. Again, that's not part of our mandate; so we don't intermeddle in their jurisdiction.

I am prepared to go on to Royal Trust and Campeau if that's satisfactory.

10:40 a.m.

**Mr. Renwick:** Just before you leave that: Does the commission have at its disposal information it could give to the committee about the extended degree of the volume of trading in the shares of Stelco in the last six months or the last four months? Is it possible for us to get it through the commission?

**Mr. Knowles:** By all means. We could get the volume of shares traded by asking the Toronto Stock Exchange, one of the self-regulated bodies that reports to us, to acquire that information for us and deliver it to the minister or the deputy minister for tabling with this committee.

**Mr. Renwick:** Tabling with the committee would be important for us. I recognize the question of whether the steel industry should have some limitation with respect to foreign ownership is a policy question. It's not a question germane to the work of the commission. Is it fair to assume, so far as there has been compliance with the regulations of the commission, that there is no known group or person or individual holding more than 10 per cent of the stock of Stelco at this time?

**Mr. Knowles:** That would be a fair assumption, sir.

**Mr. Renwick:** That's a fair assumption. If at November 10 an insider report is filed—I am not asking for a nil return—could we ask you now and for the next six months to let the chairman of this committee know immediately that is filed or let the minister know and ask him if he would let the chairman of this committee know immediately that kind of information comes to light so that we would have the information at least as quickly as the press.

**Hon. Mr. Drea:** It might be better to do it in the House.

**Mr. Renwick:** Or in the House. I am not concerned as to where it is but, if the House is not in session, then I don't know what the position is. I simply ask the minister if he would be good enough to notify the Speaker of the assembly, I suppose, and then the chairman of the committee.

**Hon. Mr. Drea:** I will do that, but I think it might save a bit of time because the committee quite often meets during the off-season. I could send it to you or to—

**Mr. Renwick:** Yes. Whatever it is, I would like to get it immediately and quickly and promptly.

My other question to the minister is, would he take under consideration the provisions in the present Loan and Trust Corporations Act and the corresponding provisions in the federal statutes related to insurance companies, banks and so on—in the light of his colleague's statement, which I am sure he shares, that the control of that industry will remain in Canada—to urge his counterpart colleagues in Ottawa to please take it under urgent advisement? For whatever it's worth, I intend to send on, as soon as we get it, the transcript of the proceedings here to Ian Deans, who is now a member of the federal House, and I know from them he is also very much concerned about this matter.

**Hon. Mr. Drea:** Just before you go into the third part, I will send a Hansard which I think explains this situation, along with some Hansards reporting the questions that were asked in the House during the week of October 20, to the honourable Mr. Ouellet. I think he is the prime source on the matter, although I know he doesn't have total jurisdiction. I will send copies to Mr. Gray too, I guess. The jurisdiction is somewhat divided between the question of FIRA and other questions.

**Mr. Knowles:** Mr. Bray has asked me to draw to your attention, Mr. Renwick, that

insider trading is reported monthly in the bulletin that is sent out.

**Mr. Renwick:** The bulletin is much too late for my purposes. In this instance I would like the obligation to be on the commission to let the minister know so that we can get it very quickly.

**Mr. Knowles:** We have made a note of that, and it will be given to the minister on the day following filing.

**Hon. Mr. Drea:** I am sure the minister would be the first to know from the commission on a matter like this.

**Mr. Breithaupt:** Mr. Chairman, while we have the opportunity, I too would like to congratulate the chairman of the securities commission in his appointment. Hank Knowles and I were at the University of Western Ontario together—I hate to say—some 25 years ago. I knew him then, and while our paths haven't crossed particularly in the past few years, I am delighted to see his appointment. The competence and experience he brings and the way the appointment has been greeted by people who are knowledgeable of securities matters within the province have shown that he is a worthy chairman of the commission.

While representatives of the securities commission are here, I thought I would take the opportunity of raising one matter—

**Mr. Renwick:** There was one other matter, Mr. Breithaupt, if you don't mind.

**Mr. Breithaupt:** Oh, I am sorry. Was there? Please go ahead.

**Mr. Chairman:** Carry on and then—

**Mr. Breithaupt:** I thought you had completed.

**Mr. Knowles:** In connection with Royal Trustco and Campeau dealings of the last several months, Mr. Renwick, those dealings on both the Royal Trustco side of and the Campeau side of the question are under active investigation by the enforcement branch of our commission and have been actively considered by the commission as a whole. It would be improper for me to say much more than that at this time. We anticipate being able to report on the matter in the not-too-distant future, but I would be reluctant to say much more than that at this time.

**Mr. Renwick:** Mr. Chairman, I accept that. I have no problem about that if that's the course it is taking—so long as the chairman will see to it that, when the minister receives it, he will let us have it too as

promptly as possible. We have rather serious concerns about what for most people, including myself, are relatively sophisticated forms of dealing. They need explanation if the public is to be aware of what the hell is going on when these tremendous numbers of dollars are involved in these offers for major institutions in the country.

When you say reasonably soon, I assume you mean in the next month or so. I am not trying to pin you down.

**Mr. Knowles:** Reasonably soon to me means six to eight weeks.

**Mr. Renwick:** Six to eight weeks. On the same problem, the session presumably will be prorogued in mid-December. If the session is prorogued, perhaps the minister can see that we got the result of that investigation as promptly as possible.

10:50 a.m.

**Hon. Mr. Drea:** I really don't want to elaborate on it here, but the federal minister has a form of investigation on an aspect of the matter. The federal government chose to do that for reasons they and I know. Therefore, any premature release of what the Ontario Securities Commission is doing in the matter would not be beneficial.

The question by the federal minister was that he wanted daily reports from the commission. The commission quite properly declined on the grounds that they operate at arm's length even from the minister who is responsible for reporting to the Legislature. We said that was not possible. At that point, the federal government chose to use its own resources to go into this, presumably so the minister could be in complete control of the investigation rather than the approach that is being taken here. Presumably that investigation will be completed after ours, although we do not know.

I suppose the commission's strong stance for independence from the political arm was because of the federal government's choosing to set up its own investigation. When they report I have no control over it—to order findings or anything else. I do not want the committee to feel the investigation by the Ontario Securities Commission dragged on while the federal government instantly pounced and penetrated. I do not know where the operation of the federal government stands. It is not being done in conjunction with the Ontario Securities Commission.

**Mr. Renwick:** I think I understand what you are saying. In these kinds of matters, I

would much prefer to rely on our own commission than any intrusion by the federal government for whatever their—

**Hon. Mr. Drea:** I did not want any confusion after the House ended if suddenly there was a report on this matter that you read about in the press, or if the committee said the minister promised to send the one by the federal government to us. We have nothing to do with them.

**Mr. Renwick:** I have no problem with that.

**Hon. Mr. Drea:** I presume they are not going to share it with us.

**Mr. Renwick:** Just as long as there is no "After you, Alphonse" about our commission's report. I hope they are proceeding with it directly and effectively and, as soon as it is available, we will get it. That is my concern.

**Hon. Mr. Drea:** It will be available to members of the House on the day it comes to the minister's desk. Knowing the relative slowness of the distribution system in the off-season, we will ensure that you will have it in your office and on your desk within—

**Mrs. Campbell:** Don't make any promises. You have some awful delays in communication.

**Hon. Mr. Drea:** Somebody will hand deliver it to the desks of those members of the committee who are most interested, and the normal distribution pattern will be used for the others.

**Mr. Renwick:** I appreciate that.

My last comment is that I was anxious to say to you, so the commission would understand, that I am still engaged in a circular form of correspondence with the Attorney General and Mr. Howard, the director of the companies branch, with respect to the Corporations Act and the G. E. Creber-Consumers' Gas problem. This has exercised me considerably. I would hope the commission would find out from Mr. Howard about the correspondence we have had because of my concern. If not, I can arrange to send it to the chairman of the commission for his consideration.

Mr. Howard very kindly asked me whether I had any suggestions for the new Business Corporations Act. I made some suggestions off the top of my head, not by way of any deep insight into these questions. I want them to know I am very concerned not only with respect to the Business Corporations Act but also with respect to the Securities Act in situations of that kind.



**Mr. Breithaupt:** Mr. Chairman, I just want to take this opportunity to raise one issue that has come to my attention as a result of a lengthy article in the *Kitchener-Waterloo Record* of October 25, 1980, with respect to an operation called Canadian Concord. I will just set the stage, if I may, by reading briefly a couple of paragraphs from this article and I will then ask for comments. I think it effectively sets out what has apparently happened, and I would be interested in hearing what comments might be made at this time by the representatives of the Ontario Securities Commission.

The article was written by Brock Ketcham and begins as follows:

"Investment promoters Gustav Ruder and J. J. Munk of Kitchener have been taking in millions of dollars from Canadian and foreign investors and diverting part of the proceeds to their own companies, a *Record* investigation has revealed.

"The amount of money they have ploughed into their real estate promotion schemes totals more than \$975,000, according to five mortgage documents uncovered as far away as Ottawa. (Two of the mortgages, totalling \$215,000, were discharged earlier this year.)

"No principal was paid off on the mortgages, some of which have been in force for several years.

"And investors, who launched dozens of uncontested lawsuits in which court judgments totalling more than \$1.3 million have been awarded, have been unable to get their money back. Even visits by the sheriff have not shaken any money loose.

"Ruder and Munk have found that it isn't difficult to raise \$5 million—the amount investors have put up over the past few years. They lured investors with high interest rates and gave them promissory notes against Canadian Concord, a company in which Ruder and Munk are chief officers. The pair told investors their money was to be used for mortgages or to finance construction projects.

"Unknown to many of the investors, much of the money—at least 19 per cent of the investors' \$5 million—has ended up in the coffers of land promotion companies owned by Ruder, Munk and groups of associates. Each investor trying to recover money has amounts ranging from a few thousand dollars to about \$700,000 on the line.

"Lately, Ruder and Munk have found that their investors aren't the only people interested in their affairs.

"Canadian Concord's operations have been at a standstill for the past several months

as investigators from the Ontario Securities Commission—the watchdog of the securities business—have tried to piece together the ponderous string of deals the two promoters have put together from their base of operations, Ruder's house at 35 Nottingham Avenue.

"So far, it is clear that Ruder and Munk have managed to make a mockery of the belief that Ontario's securities regulations—touted by the provincial government to be the best in Canada—give the investor effective protection against shaky investment operations. In fact, the OSC and the registrar of mortgage brokers weren't even aware of the existence of Canadian Concord until some initial publicity last December in the *Record*."

The article goes on at some length to give some of the background of certain of these dealings. Following the difficulties that affected some in our community with respect to Astra Trust and Re-Mor Investments, this being publicized now is obviously another black eye, or could develop into such, if this operation has been conducted without the proper overview of the OSC if such should or could have been the case.

If the investigation is proceeding, I would like to hear from Mr. Knowles or Mr. Bray just what they would be able to tell the committee without jeopardizing the ongoing involvement they and their investigators have in this area.

**Mr. Knowles:** Yes, an investigation is being conducted into the affairs described in that newspaper article. It is difficult to respond to the type of journalism in which Mr. Ketcham engages in that article.

11 a.m.

The Ontario securities law is indeed a model securities law in North America, not just in Canada. Trying to delineate where Mr. Ketcham's intellectual jumps have spanned great chasms is difficult but it goes something like this: "God created man; gave him a free will." We have set down a social framework in which man must operate, but the OSC is not capable of ensuring that mankind will follow the laws established by the Legislature.

The conduct as described in this article—as opposed to the conduct that may or may not have been engaged in by these gentlemen—is improper and it did come to the attention of the Ontario Securities Commission. It is being investigated and, if there is a violation of the law, the gentlemen will receive the penalties that are enacted for violators of the law. But just as the Criminal Code establishes a conduct to which we are all subject,



we are all aware that from time to time that code of conduct is broken and people take the penalties.

The OSC cannot ensure for residents of Ontario that there will not be people who will try to deprive them of their money in an unlawful way. When we catch them, we try to prosecute them. That is all we can do.

**Mr. Breithaupt:** I appreciate the comment Mr. Knowles has made. From the reading of the article it certainly appears that there are difficulties with respect to what security may or may not exist for various documentation or claims which people have. I realize it is very difficult to legislate against greed or to fully advise people who are prepared to take a risk when things look as though they may work out favourably that they should have been more careful when perhaps they did not work out that way. Is the investigation that you are doing or having done near to any conclusion? Can you advise us what sort of time frame we might expect for the completion of your overview as to whether securities have been given, over which the OSC would have supervision?

**Mr. Knowles:** No, I cannot. There are a great many investigations being conducted from time to time. I have no idea of the time frame of this particular one. It is very difficult to put a time frame on an investigation into what may be a securities fraud case. Again, just dealing with the facts in the newspaper article—assuming they are facts—it takes some considerable time to unwind the webs that perpetrators of securities fraud string about them.

The attempt to arrive at a conclusion in haste to satisfy the journalists—and thereby the public—that something is being done in the main ends up in an acquittal in the courts. The schemes are put together with a great deal of care, quite often with very good professional advice. Not knowing the end result or how the steps are constructed before an investigation can reach a conclusion that ends up with prosecution, you have to rebuild all of those steps not knowing where you are going, and that takes time. We have limited resources; the investigations come in, and the examiners do the best they can in the time they can. Some of them take years, some take months and some are disposed of in a few weeks.

It would be my reaction that the type of transaction described here would take some considerable time to try to unravel. I do not know the actual facts and the state of this investigation. Mr. Bray says it is his under-

standing that the investigation is reasonably advanced; that it is not in its beginning stages.

**Mr. Breithaupt:** We will just have to wait for the result then. I appreciate in an involved circumstance, such as Canadian Concord, there is the necessity of proceeding very carefully and thoroughly, because there may be satisfactory answers to all these points raised. I would not know any more than anyone else.

On the other hand, as you have said, if there are certain schemes which develop, they are very carefully and intricately thought out and it would take a great deal of time and effort to attempt to retrace all the steps which had been taken.

I look forward to eventually finding out the results of the investigation, whatever they may be. I appreciate the opportunity to have been able to raise that item solely because you were here this morning. It gave me that chance to put on the record the fact that the investigations are proceeding.

**Mr. Chairman:** Mrs. Campbell had some matters to raise. I believe it was with Mr. Simpson, was it not?

**Mrs. Campbell:** And the minister.

**Mr. Chairman:** And the minister. Thank you very much.

**Mr. Simpson,** could you and any of your staff come to the microphone?

On 1502, commercial standards program; item 6, business practices:

**Mrs. Campbell:** I too, Mr. Chairman, would like to express my appreciation to the committee for the opportunity to reopen this matter to discuss it. I think both Mr. Simpson and the minister are very much aware of my concern and that of others with reference to the Housing and Urban Development Association of Canada and particularly with reference to a vow which I have now developed on the Rembrandt Home Owners' Association.

I think it is fair to say that there seems to be no question about the criticisms of the home owners in this particular subdivision as to deficiencies. I do not think we need to go into that. That is not in question.

I have two problems about that situation. On October 12, 1979, at page J-159 of Hansard, the minister stated in this committee: "The arrangement I have worked out is that the deficiencies will be remedied, whatever the deficiencies are." However on August 4, 1980, in a Globe and Mail report, Mr. Simpson was quoted as saying: "Com-

plaints about cosmetic defects will not be dealt with, nor will repairs be made to structural defects that have not resulted in problems, even if the failures are due to shoddy workmanship and to violations of the building code."

It struck me and others that Mr. Simpson's statement was a certain limiting factor to the broader statement which the minister made. I may say for the record that this is a case of workmanship which was done, I believe, before the HUDAC program, but the problem is the HUDAC responsibility in accepting the principals of this corporation into the HUDAC warranties program. Therefore, as a result of all of that kind of dealing, there was to be a special arrangement made.

So my first question: Is the statement of Mr. Simpson not a limitation of the commitment of the minister?

11:10 a.m.

**Mr. Simpson:** If I could start on that one, Mrs. Campbell, I would be quite prepared to deal with it. Yes, the statement in the Globe and Mail about what I thought were the terms of the program is correct as stated in the Globe and Mail. We have had a lot of expressions tossed around about what it covered. We had a one-and-a-half-hour meeting. We talked about a lot of things. I am sure probably at some stage those words came out. Mr. Yonson in the Globe is actually correct. But I think in that hour and a half, to give a little benefit of the doubt, I probably said the same things three times in three different ways. It is one of the unfortunate aspects of this thing that they can be variously described.

I think I have always tried to keep pretty much in touch with what the minister said and asked to be done. I guess the starting point, as well as the letter of last year, was a meeting we held in December. That was a wide-ranging meeting that we held in our boardroom, and we discussed the coverage of the program. A lot of words have been used since about what was intended to be done.

Quite frankly, I believe the sense of the meeting—and I believe I have been consistent with it throughout in dealing with the home warranties program on this—is that the repair program contemplated things that are causing problems. I broke it down, and there is no secret about it. I had a four-hour press conference in August on this very subject in our offices.

I have said three things throughout. First of all, you have to be able to see something. You have to be able to go into the houses.

They are eight to 10 years old. Is it something that happens in houses over time, because something shrinks or dries? We all have experienced this. Is it that sort of phenomenon or is it another problem? Is there something about to fall down or is there a defect, a real problem with the thing? Finally, I have said throughout, quite consistently, that if there is, it has to be something that is attributable to the builder. It must be his fault.

**Hon. Mr. Drea:** I think an example of this problem might be—and it is very difficult to explain to lay people—that a two-by-four was never a two-by-four. Over a period of time it may have been considerable smaller in dimensions. A two-by-four is not a two-by-four.

**Mr. M. N. Davison:** That is absurd.

**Hon. Mr. Drea:** Yes. But we have had cases where people start measuring—

**Mr. M. N. Davison:** That is not the kind of problems they have in those homes.

**Hon. Mr. Drea:** This is one of the things that we have to go through constantly. We have questions about three-eighth-inch plywood eight years later and they measured the plywood. This is what we are talking about. The plywood is perfectly acceptable. We are not talking about the major problems. We have never had any difficulty with the major problems. The disputes we hear from time to time are the relatively minor ones. I am not trying to shrug it off.

**Mr. M. N. Davison:** Maybe that was a bad choice of examples.

**Hon. Mr. Drea:** No. We had it with three-eighth-inch plywood. I do not know how many hours we spent over a question of what is three-eighth-inch plywood. It is very difficult to explain to nonprofessionals that three-eighth-inch plywood is a structural dimension. Just because now it is not three-eighths, if it is performing its structural purpose and is okay then it is absolutely ridiculous to want to tear it out.

**Mr. M. N. Davison:** I am sure they would be quite happy to live with dressed lumber.

**Mrs. Campbell:** Could I continue, Mr. Chairman? You have allowed the others without interruption. I would like the same courtesy.

I am concerned about the statement, even if the failure is due to shoddy workmanship. While there may not be a present complaint about shoddy workmanship or an effect of it, how do you measure that down the road?

The other thing is if you have a violation of the building code—

**Hon. Mr. Drea:** There was no building code when those houses were built, Mrs. Campbell.

**Mrs. Campbell:** There was a building code of some kind. You say the Ontario one was not in effect.

**Hon. Mr. Drea:** No. It was the North York building code, and one of the problems for these people is that North York has refused to accept any responsibility for what was done when it had the jurisdiction. This has been a problem since day one.

**Mrs. Campbell:** Let us take it from there. Now you have a building code.

**Hon. Mr. Drea:** Yes, but only for new buildings.

**Mrs. Campbell:** I am aware of that. Do you take responsibility if the workmanship is in violation of your building code?

**Hon. Mr. Drea:** Today?

**Mrs. Campbell:** Yes.

**Hon. Mr. Drea:** Sure. One of the prime considerations of the HUDAC home warranties program is that the building must be constructed in accordance with the building code. Therefore we accept responsibility but that responsibility is delegated back down to HUDAC. Then if the place was built contrary to the building code—it supposedly was inspected by both the municipality, et cetera—they must assume the liability.

**Mrs. Campbell:** What relationship then does your example of a two-by-four or plywood or something bear? Would that be something you would gloss over, pass over or—

**Hon. Mr. Drea:** I am not glossing over anything. I was trying to explain some of the difficulties.

**Mrs. Campbell:** I am aware of the difficulties of building. My mother was a building contractor. I am quite aware of what two-by-fours and so forth are.

**Hon. Mr. Drea:** But this is very difficult on some of the things that are coming in—not the major ones. This is why Mr. Simpson tried to give a broad definition of it. It has to be a problem.

**Mrs. Campbell:** When? Now.

**Hon. Mr. Drea:** Part of the problem is that I suppose it would have been relatively easy to do had we confined ourselves to the original owners who were still in place. Then you can get an accurate history of the house.

But in the beginning I considered that to be manifestly unfair. I felt we should take all of the houses. It has never been done before. Usually on anything it is as long as the original owner is there. Some of these have changed hands a number of times.

We went into them. Then, of course, you get into the difficulty of who did what, because there are always changes in a house. Then we tried to sift that out to the problem now. You have to be realistic too; you have to take into account some things that would normally happen in a dwelling just by the fact that it is eight years old.

One of the examples we used—and I do not know if there are any cases of any particular concerns in there or not—is a fireplace whereby the adjustments in the house and the shrinking of the drywall now does not fit flush with the drywall. That sometimes can be a very normal thing. What we have had to get at was whether the fireplace was installed properly in the first place, and that has taken some time. You get into the normal shrinkages and adjustments that take place in a house, no matter how well built it is. I suppose we asked for it because we wanted to be fair to these people. We told them to please list all their people on a piece of paper. That is the way we commenced at a meeting last year—would they please find out the people.

I think the Rembrandt Home Owners' Association would be the first to tell you that, when this commenced, they did not really know who the people were in all of them. That is why they met with us. They knew the original owners but, as the original owners or second owner went off, these people obviously were not—as a matter of fact, some of the people who were contacted in this had no idea that their homes were a problem. They had bought them so long afterwards and there is a little difference in buying a lived-in home. When you walk into the house, you can see if the walls are tilted this way or that. It is a little bit different from buying from a design.

We left it as broad as possible, although we certainly put the caveat in. We said they should bring in as broad a list as possible. If you caution people to bring in only a relatively smaller accurate list, quite often they neglect what they consider to be a minor matter, which two years down the road could be a major one.

11:20 a.m.

They brought them all in, although there was a caveat that some of them might not



be valid. But we said, for heaven's sake, please list them because following that there was going to be a professional inspection house-by-house. Then when the inspector went in it would not be a case of looking around and saying, "Is there anything the matter here?" the person saying, "I don't think that vent for the heat is right," and the guy saying, "Maybe if you adjust it a little bit." If there were a professional engineer looking at it, this would not happen.

When we say some of the stuff couldn't be seen—it has to be seen—we meant by the inspector, not by the eye. In the case of roofs there was no way you could see from the top, from the sides, from the attic or anything else. There were some real pros, who knew what they were looking for, who went up on that roof and literally took apart a small section and so forth. By "seen," we mean by the inspector.

**Mrs. Campbell:** Could you tell me, since you have said that real pros did this, who they were? Who were they attached to?

**Mr. Simpson:** The first set of inspections—there were sometimes two inspections—were teams of two individual inspectors from the Ontario new home warranties plan. The subsequent work on looking at some roofs was done by a professional firm in the Toronto area, The Trow Group Limited, who I understand are the best in the business. They were engaged as a result of our request of the warranty corporation. We said, "Let's only do it once, let's do it right and let's get the right answers; so go find the best in the business to look at the roofs," and that is what they did.

**Hon. Mr. Drea:** I think it is fair to say they took things apart, without endangering the structure, to really look at the inside of those roofs. It was not a paper inspection, by any means.

**Mrs. Campbell:** The next point is on the matter of the inspections and the inspection reports. I am trying to find, without belabouring this, the statement of the minister about providing those reports to the home owners. I am sorry it doesn't come readily to me in this massive file. But, as I understand it, the minister stated that he saw no problem with giving these inspection reports to the home owners.

**Hon. Mr. Drea:** When they were completed, sure. No problem.

**Mrs. Campbell:** I understand Mr. Locke stated that he wanted the opinion of HUDAC's counsel before he did anything in

the matter. But he did mention that Pastoria Holdings already has the reports. If the reports are incomplete, why did Pastoria have them? Why at least didn't the home owners have the same opportunity as the builder to see what the reports were?

**Mr. Simpson:** There is a very straightforward answer to that.

**Mrs. Campbell:** Good. We haven't been able to get it.

**Mr. Simpson:** Mrs. Campbell, in the last two or three months I personally have spent about 10 hours meeting with the association representatives. We have been through everything under the sun, including these reports. The answer is fairly simple.

Pastoria had them because Pastoria was being told, "Here, boys, take a look at all this stuff." I can only describe the initial documents as "all this stuff." As the minister said, it is everything under the sun, including a leg that was missing under a vanity—one of the original post-type supports for a vanity was missing. There is everything, and that is what we asked for. "Send up everything under the sun."

Two inspectors from HUDAC went out. They went around with a clipboard and the thing with all this stuff, without making any judgements, because they knew they had to bring it all back. The HUDAC inspector went around; noting, "Yes, there are some water stains on the ceilings." That was noted on that original document. The four or five different teams of inspectors were simply saying in a narrative fashion, "Yes, there is water," or, "There is a crack in the basement."

The logic at the time was to bring all the information back and then sift and sort through it all. You have the professionals of the business all get together, you bring in other experts, as necessary, to go through it all and say: "Okay, we have a pattern of something here. We have a lot of mention of water; so let's get the experts in the roofing business to make the definitive inspection."

Our thought throughout was that it would be a hell of a lot better, when all the work was said and done, to give the owner a very thorough response. Don't believe for a minute that there wasn't going to be a very thorough response. Everything they enumerated was going to be responded to: "Sorry, ma'am, the leg missing is your problem," "The painting is a maintenance kind of thing," "This other thing is a builder problem, and it will be rectified," and so on. Everything was going to be categorized.



The problem with those original inspection forms, as I still see it, is that they are not prescriptive; they are not findings of any kind. Frankly, what concerns me is a lay person who saw what the inspector noted, such as that there is water, would think that must mean there was a fault or a finding of wrongdoing on the part of somebody, and that wasn't the case. Frankly, I still remain concerned—

**Mrs. Campbell:** It was never the case, or in some cases—

**Mr. Simpson:** It may not have been the case. My concern throughout has been to give the owner a full and complete and straightforward report that includes every item and a straight, strict answer to each and everything, yes or no: "It is your own problem," "It is a builder problem" or "It is a maintenance problem." In some cases our conversation with the warranty corporation was: "Look, warranty corporation, even where it is an owner problem why don't you send something along and say, 'It is your problem, but here is a good way to fix it up, or here is a good way to deal with it'? Give them some advice."

We saw that as a very positive and straightforward thing. What we have promised throughout—every time we have met we have said the same thing—is that my concern remains with the original inventory of pieces of paper. They contain everything under the sun, and an inspector went around and, without making a finding of any kind, simply said, "Yes, there is some water," "There is a bit of wetness on the basement wall," "There is a piece of corner missing on the aluminum siding," or something. They are that kind of document, but we are not, and have never been, adamant one way or the other. We have that concern; I still do.

At the last meeting we had with the association, which I say ran for about four hours, and Mr. Locke was there—

**Hon. Mr. Drea:** With the press.

**Mr. Simpson:** Yes. The only reason we raised the question of checking it with the lawyers was that I was concerned because I have a mania with privacy and so on. I said, "Wait a minute; you had better make sure." I wasn't worried about HUDAC's liability. We are not concerned about that. We are simply saying: "Hey, look, folks, they have given you these things. What do they say? What do they cover?" We said to the owners, "Subject only to that, which we think will be a very basic or routine kind of

checking, we are inclined to give them to you, with the caveat of what those documents actually are, and that is just the raw material of the assessment process." I can't tell you any more straightforwardly than that about our concerns in that regard so that they will not be misinterpreted. Nobody is trying to hide anything.

**Mrs. Campbell:** How long has this been going on? How many dates have you given to these people as to when the repairs would start?

**Mr. Simpson:** A number.

**Mrs. Campbell:** Was it a fact that in June they were told that the repairs would be done this summer and later were told they would be done this winter? What is your interpretation of when winter comes in Ontario?

**Mr. Simpson:** Can I go back to the original times, as well?

**Mrs. Campbell:** Yes, please.

11:30 a.m.

**Mr. Simpson:** I told the association, and I guess I said it quite clearly to the press at the time we met in July. We pressed Mr. Locke, being the kind of guy he is, way back when this program first started. We said: "Look, Ed, we don't know how many of these things you are going to get—we don't know how many of these forms are going to come in, and we don't know what they are going to have on them—but can you give us some idea of what you think it will take you in terms of the time?" At that time he said, "Gee, that is a dicey kind of thing, because it is like looking in a crystal ball." He said, "Okay, I think maybe 16 weeks will do it." That took him to around the middle of May or something like that from the time the things started to come in.

We had a meeting with the association on May 13 and went through this. We told them: "Folks, that inventory of stuff has revealed a certain number of trends; water is a common denominator, as are roofs. Therefore, we have asked the warranty corporation to get the best experts in Ontario because we want the right answer; we don't want to make a mistake." That is what they did. We told them that was delaying things.

When we came in here in June—at the estimates review on June 12, I believe—we were at that stage. The developer had been in talking to Mr. Locke and dealing with the Housing and Urban Development Association of Canada. They worked on the roofs, the further technical assessment was being done, the vibes were great and it was going

along quite well and the association knew this. At that time, with the further technical work and the roofing job, again there was no feeling of, "Okay, Mr. Roofer, don't worry about it, don't rush." The thing was to get the job done.

The roofer had to go back a number of times. The first time he said, "Well, I think I have to go do some more." We said, "Okay, go take a roof apart, go take a couple of roofs apart, tear off some shingles; do it right." The association knew that was what was going on. I am not sure they believed it, but we told them and we told them the name of the company.

**Mrs. Campbell:** Would they not believe it if they saw some outward and manifest—

**Mr. Simpson:** They had guys climbing on their roofs from The Trow Group. The guy made no secret of the fact he was a consultant.

**Mrs. Campbell:** Have any of those roofs been repaired?

**Mr. Simpson:** No.

**Mrs. Campbell:** Do you realize that snow comes in Ontario—

**Mr. Simpson:** I certainly do.

**Mrs. Campbell:** —and they are still in this condition? Now when, O Lord, will they be done? If you found even the roofs wrong, could you not not have made some effort—

**Hon. Mr. Drea:** Let us put the matter into perspective, if you don't mind.

**Mrs. Campbell:** I would like to. How long have you had this matter?

**Hon. Mr. Drea:** How long have I had it?

**Mrs. Campbell:** Yes.

**Hon. Mr. Drea:** I have had it? What?

**Mrs. Campbell:** This kind of negotiation.

**Hon. Mr. Drea:** Mrs. Campbell, let us look at the entire matter. I know a little bit more about this matter perhaps. I go back to 1973 and 1974. I looked at those houses, looked at them as a matter of record, and there was no warranty program at the time.

It was because of informal discussions with you and a formal question from Mr. McClelland—

**Mr. M. N. Davison:** Several others asked questions too.

**Hon. Mr. Drea:** You don't want me to give Mr. McClelland credit for asking the question?

In any event, when I became the minister, in my first estimates, which were in the House—I don't believe you were there, but you had discussed the matter informally with

me—there was a request to the minister. That request to me was, knowing at the time of the introduction of the HUDAC home warranties program that Pastoria Homes was registered and allowed them to continue to build, notwithstanding what had happened in the particular subdivision in North York, and realizing there is no legal responsibility for the home warranties program to be compelled to remedy the deficiencies in that subdivision, would I see what I could do?

I must say it bothered me because, as I say, I go back a long time. I saw those houses in their original state, let alone what they are today. I said I would see what I could do through my good offices. We looked at that thing, and at the proper opportunity I used my good offices and obtained the following commitment from the home-building industry: While there was no legal responsibility—

**Mrs. Campbell:** So far as repairs are concerned.

**Hon. Mr. Drea:** So far as repairs are concerned.

**Mrs. Campbell:** You will agree there was some responsibility in not accepting for registration a firm with this kind of background.

**Hon. Mr. Drea:** Mrs. Campbell, that was a matter that had already been decided. Informally I was there in 1974, 1975, 1976 and formally I was asked by you and Mr. McClelland—and you were very fair about it; you weren't dwelling, but you did not agree with what had been done in terms of the registration—to use my good offices to see. It wasn't even a demand—

**Mrs. Campbell:** No, it wasn't; it was a request.

**Hon. Mr. Drea:** It was a very fair request. The commitment that was reached was that the deficiencies would be repaired, because I wasn't going to get into legalisms with the industry represented by the Housing and Urban Development Association of Canada. I have never discussed this matter with Pastoria, or whatever their holding companies are called, and I am not going to get involved in it. It think I explained it with a very simplistic approach. I was not going to get into legalisms and I pointed out, in fairness, that this doesn't mean existing original owners.

Mr. Simpson and I are looking at an inventory of homes. I wasn't going to get in a fight at the end about this house over here really not being part of the subdivision, the whole circle. The very clear understanding

was that they would commence discussions with the contractor and that those deficiencies would be remedied by the contractor. Since they had no legal power under terms of a registration or what have you to enforce this, the commitment was that if after the negotiations, which involved all of these inspections and finding out about the material, the Pastoria Group maintained their original position that they had no legal responsibility under the home warranties program to do anything, the home warranties program would stop in.

Our commitment was that since there was responsibility, forgetting legalism, we agreed on this point that we would proceed with orderly negotiations. Also bear in mind that we had no idea of what the deficiencies in the homes were. The last time around, in 1974 or 1975, when the home warranties program came in, there were various representations and various court cases. Those court cases, by the way, were not terribly successful.

**Mrs. Campbell:** I am aware of that.

**Hon. Mr. Drea:** First of all, we knew there had to be an inventory taken, which is one of the basics since nobody really knew any more who owned or physically occupied those houses. Things were horribly out of date because nothing had happened for two or three years. It took us a fair amount of time to even get the project organized on that basis.

We proceeded to do all of those steps so the Pastoria group could be presented with the scope of the problem, what the remedies were going to be and when would they commence. In terms of the scope of the problem, that was not exactly broken down into individuals, because on the first go around there were a lot of things there, but on the second go around, there were the water stains.

Some of the original inspections found water stains that might have come from the roof or they might not. For some it was just a vent in the roof that was collecting moisture. It would be very simple for us to say, "Yes, change the vent," and the vent would have got rid of the water stain anyway, but we were concerned about the roof. Although it is fair to say some of the vents were not put in properly, there were water stains in a great number of cases where the vents were put in properly. Mr. Simpson and our own people weren't buying the very simple answer, which was, "Get the moisture out and you won't have water stains." We

wanted to look at the roofs—and these were flats roofs, by the way.

**11:40 a.m.**

Mr. Locke has been involved. We are not going to meet with Pastoria. I will be very candid about this: What I really wanted was a very simplified remedy whereby those houses would be treated as though they had just been bought and were under warranty. It would be exactly the same procedure because the commitment to fix was within the terms of the warranty. We presumed HUDAC was the best way to do it, that this was your goal to do it as perhaps it should have been done, and if there had been an act in 1974 they would have done it.

We went along; we didn't call in our cards. I'm talking about the big one, where if someone is going to fix it and it comes down to the end, you guys can figure out who is going to fix it because the minister isn't. We were in every position in June because the roofing things were finally getting definitive, and that was the big one. I am not going to question that there is still going to be some dispute among some people regarding windows and so forth; there is some expert opinion that it is just normal wear and tear but there are other people who say you are always going to have a bit of that.

At the time that came in, because of a number of circumstances—and I am not going to outline them; people can draw their own conclusions—one of the difficulties in a negotiating thing and an ongoing thing comes when it gets out into the public sphere. From that time on, the businesslike attitude—and by businesslike I mean bearing in mind the responsibility factor—simply hasn't been there; it has deteriorated. So I guess what I am going to tell you right now is that in my view, although it may be challenged by others, those negotiations have come to an impasse. I want that impasse broken. If that impasse is not broken at that level very quickly, I can't horse around because the problem becomes more acute the longer it goes; some of those houses have been sold and so on.

I am not going to negotiate with lawyers from the Pastoria group. I am not going to negotiate terms and conditions with them whatsoever. I want the impasse broken. Mr. Simpson has instructions: the impasse is to be broken. If that impasse isn't broken, then, Mrs. Campbell, I have played my cards, because I have done everything that I agreed to do and Mr. Simpson has carried it out in an exemplary fashion that was the other side



of the commitment; they thought it could be done reasonably and without calling in the entire industry to foot the bill or the warranty. We want that impasse broken or we are going to say the minister has a commitment from the HUDAC home warranties program that if this can't be resolved, it will resolve it. How it deals with Pastoria, I don't know.

It is not just the winter or the time, but these people have been waiting since the very time it began. I suppose I was biased, but I was sympathetic to them from the very beginning. I was very pleased that we reached the commitment that we did. I regard that as one of the better things I have been able to do as a minister. I want those houses fixed.

I consider that negotiation to be at an impasse. Someone may come in and ask, "Why would you say that?" I am talking about someone from the builders' group. "It was just a little bit of negotiation, please." Okay, as far as I am concerned it is to be done, and if it is not going to be done by them, then all the inspection reports come together, the final inspection reports, the definitive ones, and they go through the HUDAC home warranties program and the work commences. Who pays for it? Let them settle that afterwards. It won't be the home owners.

We are now getting into things where they are trying to differentiate between original owners and second and third owners. That was never there. Part of the problem is that they brought in a legal team. I am talking about Pastoria, not HUDAC. HUDAC has really remained very aloof, other than carrying out the work of presenting the facts. HUDAC, as a policy thing, has remained aloof, and properly so.

They bring in lawyers and they start trying to give me legal arguments and trying to give Mr. Simpson legal arguments. We tell them: "Fellows, you went to law school and that is terrific, but here is the deal up here. It may not be what you would have negotiated. Tell your client at our request that under the HUDAC home warranties program, et cetera, he is not legally liable. Tell him that; let's get that one out of the way, because he knew that before he began. But here is what the industry agreed to and this is what is going to be done, and cut it out."

Maybe Mr. Simpson can carry on because he is in the day-to-day negotiations. He knows exactly the position. We have discussed it and, as far as we are concerned, we have carried out our end of the arrangement in good faith. We have allowed the inspections,

the negotiations, et cetera. The minister has never intervened. As far as I am concerned it was settled. The problem is, it is settled in the minister's mind, it is settled in the HUDAC home warranties program's mind, but it ain't settled in those houses, and it is taking too long.

**Mrs. Campbell:** Thank you, Mr. Minister. I do appreciate the fact that I think you did try. I have no criticism of that. But once you get started and give deadlines to people and then they are shifted forward, there seems to be no end to it.

**Hon. Mr. Drea:** Mrs. Campbell, let us speak about the deadline for a moment. We didn't want this thing to carry on to 1990 so that when somebody is going into a senior citizens' apartment there will be a little writeup that this is the last of the original Rembrandt home owners and nothing has been done. I always believe in setting targets and goals. If you can't get something done in, say, three months—and I don't pick dates out of the air; it is usually in a quarter—if you can't get anything done now, I want to go another route and call it in.

You cannot go on negotiating forever. On the sheer scope of this problem—not only the real deficiencies, the ones everybody agrees on, but some of the perceived and some of the defences and all the dialogue that goes on—we could be there until the year 2000. We are not going to be. If you want to fault me, perhaps we have been too patient, but I thought it was important to get this done. For the up-to-date information, you could talk to Mr. Simpson, because he handles it daily.

**Mrs. Campbell:** The other matter is, I really cannot understand North York's attitude in all of this since they did have a building code and were supposed to be having people there who knew how to inspect. These people are in their territory and they should not be left by a municipality. However, the municipality has washed its hands.

The other point I would like to raise out of this is, does the minister not think the legislation pertaining to HUDAC ought to be amended because we get the same sort of escape under the corporate structure?

**Hon. Mr. Drea:** I don't think you do.

**Mrs. Campbell:** Well, all right. Pastoria was registered and then the word that came back from HUDAC was, "Well, of course, it is no longer Pastoria"—



Hon. Mr. Drea: It is no longer Rembrandt. They changed their corporate name.

Mrs. Campbell: All right—"and therefore they can escape their responsibilities." You are shaking your head, Mr. Simpson. That is what HUDAC has said to me.

Hon. Mr. Drea: But that applied to that case, Mrs. Campbell, because that operation commenced before the home warranty program. With the home warranty program, if the ABC Company defaults and doesn't fix and owes HUDAC money in any way, shape or form, it cannot get a registration until it repays HUDAC for the remedial work done. It cannot come back in as the CBA Company. It may be okay in bankruptcy, but that was one thing that was ended. It is the principals of the company who are liable.

If you owe HUDAC \$500,000 because you didn't finish your subdivision, you went belly up and so on in the face of all the things that had to be done, then if you try to come back into the building industry as a principal—you get the occasional one out there with a one per cent share—HUDAC will not give you the registration until you repay. If you have no registration, you cannot get a building permit and you are out.

11:50 a.m.

Mrs. Campbell: What about a case like this where the record was at least questionable at the time of registration—

Hon. Mr. Drea: The faulty decision was made, Mrs. Campbell, and it was not my decision.

Mrs. Campbell: No, I am not suggesting that.

Hon. Mr. Drea: If I had been minister at the time, I would have taken a different stance. It was a very legalistic stance that was taken at the time.

Mrs. Campbell: Exactly.

Hon. Mr. Drea: That legalistic stance was that on the basis of the North York business being passed, the registrations were effective as of that date. That was a very legalistic interpretation.

My concern is, how do you tell the people about a very legalistic decision any more than you tell them about a legalistic bankruptcy decision: because Drea is bankrupt on the south corner of the street, Simpson and Drea can come back in on the other side of the street and so forth. That is what we tried to recognize. There will never be nor can there be another one.

Mrs. Campbell: Good.

Hon. Mr. Drea: This is my problem. If it was happening today, I have all the legal authority in the world and, wham, we would just order it paid. I am not going to fool around. But on this one, I have every authority in the world because I have a handshake—not from Pastoria, but I have a handshake. People expect this minister to keep his word. I am not very legalistic; I have that handshake or that verbal agreement that it will be done.

Mrs. Campbell: The final question from me is: You have said you want a termination to this and you have said "very soon."

Hon. Mr. Drea: Yes.

Mrs. Campbell: I do not want to trap the minister, but is there any way we can look to what "soon" may be now, with this experience?

Hon. Mr. Drea: Let me put it this way: because we have actively entered the final phase, or if you want to use the vernacular, we have called in the cards, I do not know when that particular meeting will be because people have to come in from around the province, but I would hope to be in a position before the Legislature ends to give some relatively firm dates as to when the remedial work will be done.

I will say further that we will bring everybody up to date as to where and relatively when the remedial work will start. If there appears to be an impasse between the minister and the HUDAC home warranty program on the nature of the commitment, the minister will then reveal that commitment in some detail—and this was a private meeting, and I have just come to the conclusions on it—and tell you exactly where we are going so that the people who are affected in the off-season of the Legislature can watch the progress.

I will do that as rapidly as possible. I do not mean I will do it on December 12 necessarily; if I can do it earlier than that I will, but certainly at least by December 12 there will be a full game plan so that everybody knows what is happening within the time frame.

Mrs. Campbell: Thank you, Mr. Minister.

Hon. Mr. Drea: In the meantime, if people do have questions they should call Mr. Simpson because he is in day-to-day contact. Mr. Simpson is very good, Mr. Simpson has a blank cheque from the minister, and Mr. Simpson was privy to all the "good offices" that went on. It is not a case of a public servant being brought in and the minister

vaguely telling him what went on at a private meeting. He was there, he knows and he has charted his work accordingly all the way through on that basis.

**Mr. Williams:** Mr. Chairman, the minister has given some credit to Mr. McClellan and Mrs. Campbell for raising these matters in the committee and getting formally on the record an expression of their formal concerns.

**Hon. Mr. Drea:** Mr. Williams raised them with me too and I can name a couple of others.

**Mr. Williams:** I think, Mr. Minister, you are to be given the real credit in this matter, because only you could have broken the initial impasse. As you know, we have discussed this informally behind the scenes—and not with any grandstanding in mind—to try to resolve this very difficult problem. As you have pointed out throughout, and as the critics of the government's seeming inactivity in the matter have been wont to put aside, there were the legal impediments.

It is quite easy for Mrs. Campbell to say a pox on the house of North York. I was there at the time and I know it is quite easy to say that, Mrs. Campbell, but you know that municipalities have certain legal limitations as well.

**Mrs. Campbell:** They also have responsibilities.

**Mr. Williams:** They certainly do, and I suggest that North York has probably acted more responsibly over the years than other municipalities within the metropolitan corporation. That was one instance where they felt they had gone as far as they could go. It was not through lack of interest or concern because that council spent many hours, just as you have, Mr. Minister, in trying to work on the problem. They concluded they had no legal authority or responsibility to embroil themselves in the matter after the fact. That can be challenged, it has been challenged, but that is the position the council took at that time.

At the time I was first elected to this Legislature, the matter was still very current and topical. The borough in its wisdom took the position it did based on the legal advice it had from the borough solicitor.

**Hon. Mr. Drea:** In fairness to Mrs. Campbell, she is talking about the responsibility of North York at the time of construction. What the council was faced with up there was some time after construction. I do not want to put words in anybody's mouth but I think you are talking about two separate occasions.

I had the gravest concern—which was reflected, if not in the Legislature certainly in the press—at the time of the original controversy about the position of the building department in North York concerning the manner in which Rembrandt homes, or that subdivision, were inspected. I agree with you that after that time there was nothing the council could do.

**Mr. Williams:** I agree there is a distinction to be made.

**Mrs. Campbell:** That was what I was referring to. I would like to point out that I do not grandstand as a rule. I trust that Mr. Williams is not suggesting I was grandstanding in bringing this matter forward.

**Mr. Williams:** I am not suggesting that. I used the term grandstand in the sense that the only means by which you can bring the matter to the ministry's attention in a public way is before a committee.

**Mrs. Campbell:** I have a file of trying to bring it forward by private correspondence, and therefore I felt I should bring it here.

**Mr. Williams:** I think your files are one tenth the size of my files.

**Mr. Chairman:** I am sure both Mr. Williams and Mrs. Campbell were concerned about the problem.

**Mr. Williams:** If I might continue for a few moments—

**Hon. Mr. Drea:** Mr. Davison, I have to continue the name credits. You were concerned informally, by correspondence.

**Mr. Williams:** Whether it is formally or informally, the fact is there has not been a lack of interest by your ministry and the full credit rests with the initiatives you have taken, Mr. Minister. I too felt at the time—in talking to you and the staff about the extent to which this minister could go because the warranty program came after the fact—that there was no apparent manoeuvring room because legally this had occurred prior to the legislation. It was a position that one had to put to the home owners involved. It was not a matter of shades of grey, it was black and white. Either legally we could assist them under the program or we could not. There were no retroactive features to the legislation. I made it clear at the outset that I felt there would be no retroactive provisions in the legislation that would come to their assistance, notwithstanding the fact that I had discussed it with the ministry people at the time the legislation was in preparation.

That hasn't changed, but the minister has seen fit to put legal matters aside and look for other obligations, given the circumstances of the situation, and if it were not for his initiatives and my urgings of him to endeavour to find some way of breaking the impasse based on legalities, we wouldn't be where we are today. So I don't think we can be too critical of him for the fact that it wasn't done before the snow fell or it wasn't done by a specific date.

**Mrs. Campbell:** It depends on the year, of course.

**Mr. Williams:** Maybe it does depend on the year. The point of the matter is that something is being done, Mrs. Campbell, and I know there are meetings taking place even this evening with many of the parties involved, including owners of some of these Rembrandt homes, as an ongoing part of the dialogue, and I know they too feel it seems to be a never ending matter. The fact that there is ongoing work, evident work, in the ministry is identified by Mr. Simpson and the fact that the minister continues to take an active part in it is evidence enough of the good faith of this ministry.

I don't think any suggestion has been made that because of the fact of our inability to meet certain time commitments the government is in some way reneging. That just is not based on fact. I know no one said they were reneging, but somebody might draw that erroneous conclusion and it is not the case. I think it is encouraging to hear the minister give a further commitment that he will be reporting fully to the House before the end of this session. I appreciate that members of the other parties have taken this interest but the full credit does, by and large, go to the minister.

**Mrs. Campbell:** Mr. Chairman, I did not cast aspersions upon the minister. In fact, I paid tribute to his intervention. I do have serious questions, as does the minister, about HUDAC registering Pastoria after this debacle and I think that is very much a matter within the jurisdiction of the minister.

**Mr. Chairman:** The minister has to go to a cabinet meeting but he will be back. In the meantime, before we get off of this vote, I would like to draw to Mr. Simpson's attention, and through him to the minister, an accusation and I think it is an accusation implied if not stated—

**Mrs. Campbell:** An allegation.

**Mr. Chairman:** —an allegation by Mr. Irv Kumer, who was formerly of this ministry,

that in fact the HUDAC home warranty program seems to discriminate against condominium owners. I would like to read into the record very briefly certain parts of an article written by Mr. Kumer in *The Condominium* newspaper July 31, 1980. Mr. Kumer, in dealing with HUDAC says:

"From the inception of the warranty plan, HUDAC has found its exposure on condominium warranty claims rising so dramatically that it keeps looking for ways to reduce its liability as much as possible. Last year, in March of 1979, HUDAC passed a bylaw that limits the total amount that can be paid out of the guarantee fund on any single condominium project, whether on units or on the condominium elements or both, to \$1 million or \$20,000 times the number of units, whichever is less. The maximum liability on any other type of home is a straight \$20,000 per home."

I suggest to you that is a form of discrimination against those people who buy condominiums as distinct from those people that buy other forms of housing. He goes on with a very detailed and I thought quite enlightening explanation of why this is so, and I hope Mr. Simpson and the minister will look at that.

He says: "What this means is that if there is a project of 100 street town houses where title to each is held individually, HUDAC's liability would be \$20,000 times 100 town homes for a maximum of \$2 million. If those same town houses had been built as condominiums, its maximum liability would be \$1 million, or only \$10,000 per unit."

I am sure that makes sense in the light of the previous paragraph that I read. Kumer goes on: "How can HUDAC do this? Simple. HUDAC, as a corporation, has a board of directors composed mostly of people from the development industry along with people representing financial institutions, insurers and others involved in the development industry. The power to set limits on its liability to the public lies in the hands of HUDAC itself. The board of directors is given power under the statute to pass bylaws which themselves have the force of law. These bylaws do not need the consent, nor do they receive the scrutiny of a cabinet minister, the cabinet or even the Legislature. So when HUDAC decides that condominiums represent too high a risk, they simply reduce the risk by a stroke of the pen." I suggest that unless the minister acts on this particular form of discrimination against condominiums he is certainly overlooking a problem that is recognized not



only by condominiums but also by a very learned counsel who was once in the employ of his ministry.

I am just reading into the record parts of an article by Irv Kumer, Mr. Minister, and I am hoping you will look at this.

**Mrs. Campbell:** He is a very able person.

**Mr. Chairman:** There is one last paragraph that I will simply read for the record.

"With condominium developers dropping like flies these days, purchasers are finding themselves more and more often living in their units which might themselves be complete but with substantial work still to be done on the common elements. If HUDAC can completely deny liability for unfinished work, it leaves the owners and the condominium corporation with no one to turn to." I am asking the minister to address himself to that, plus some of the civil rights and constitutional issues that are brought up in that article by Mr. Kumer.

**Hon. Mr. Drea:** I don't know how HUDAC could avoid responsibility for a unit that is unfinished. Perhaps Mr. Kumer might give me some information or some examples. The truth of the matter is that the bulk of the money expended by HUDAC—\$8 million or something—has been to finish condominiums where the developer went belly up.

Indeed there are now proposals before us from some very affluent groups that we allow shell condominiums to be registered—and we won't do it—on the grounds that they promise that everybody who buys may want to decorate individually so they will take the shell and complete it according to building code specifications. We have said it may be progress, but there is no way because that would totally deny you any warranty. The warranty is only on the completion. So if Mr. Kumer wants to write me a letter and say what he is talking about, I can reply.

**Mr. Chairman:** I think if the minister reads Mr. Kumer's article, particularly the earlier paragraph which I did read into the record in the minister's absence, in which Mr. Kumer is suggesting that the liability to condominium owners as compared to other home owners has been greatly reduced by a stroke of the pen—

**Hon. Mr. Drea:** That may be Mr. Kumer's interpretation, but that was done for consumer protection. Let me tell you what was happening—and this was a very real problem—people were coming in with all the money, particularly for the more affluent type of condominium, which is for the retired person

or someone selling their home. The people did not want mortgages. They were plunking in vast amounts of money—\$100,000 was not uncommon. The builders were encouraging them to put in all this money because it was guaranteed, and there was every reason to believe the next project was being financed out of those deposits.

12:10 p.m.

We brought it down to \$20,000, which is a reasonable deposit. We informed; the public were informed quite massively; there were consultations. Mr. Kumer knows there were consultations on this entire problem.

With the HUDAC home warranty program, we agreed it was far better consumer protection if there was a nominal amount, which was the \$20,000 that was protected, so people wouldn't put any more than that down, so the builder would be encouraged to finish that condominium rather than taking \$125,000. Mrs. Campbell, people are walking in with cash saying, "Here, I do not want a mortgage." The place is still going up and two or three others down the road were being built.

I had some experience in my own riding prior to this plan coming in where I had one project that was done this way and it financed a second and a third in Halton and a fourth in Hamilton. When the builder suddenly started to go belly up because of something in Hamilton, the people in the original place lost virtually everything. That is why it was done. I do not care what Mr. Kumer's comments are. He is perfectly entitled to them. But let it be understood Mr. Kumer knew why it was done. Mr. Kumer may not have been at the meeting, but Mr. Kumer certainly was the senior legal adviser at that time to Mr. Simpson and he knew why it was being done.

If the question is, because of inflation, perhaps we should raise the coverage to \$30,000 or \$40,000—but we never again will have unlimited, because you are asking for it. Also bear in mind that the real cost was not being borne by the builders, because the HUDAC warranty program is financed, as you know, roughly half by the people's purchase of the package—they do not recognize they have paid it, because it is in their purchase price—as well as HUDAC, and here was the problem. If you were really going to insure against defaults where the deposits were in the six-figure bracket, the insurance, the package of protection was around \$90 then. It was \$97. We have projections showing that to cover this sudden trend you will



get up to paying such an enormous amount of money it would not be worthwhile doing, so we brought it down into proportion. It was for consumer protection. It was to the advantage of the consumer to plunk all kinds of money down there with unlimited guarantees. We would have said there was no way and in fairness to HUDAC, yes, they can have those limits as he described.

HUDAC never wanted to go to unlimited. It was at the suggestion of this government and a former minister that they go to unlimited. HUDAC from day one had some very real concerns about the ability of the developer in project A to use huge deposits to finance B and C and that is where the trouble began. At the request of the government, they went to unlimited. They came back and showed us the problem. We discussed it. The figures were astronomical, the potential liabilities out there which people were going to have to pay for. This is not a tax supported operation. That is why it was done.

**Mr. Chairman:** If the minister agrees there is a problem then in the maximum liability, namely, as Kumer suggests, any other type of home is a straight \$20,000 whereas a condominium under the present formula would be considerably less and we agree the unlimited is unworkable, would the minister be willing to bring in a formula whereby the maximum liability on a condominium unit would be the same as that of another?

**Hon. Mr. Drea:** We are talking about two different things. I was talking about the deposit. The deposit is the same for both. This is against the builder going bankrupt, your initial deposit. That is what I was talking about.

**Mr. Simpson:** Mr. Chairman is talking about repairs and rectification and so on. I am in no position at this time to quarrel with those numbers. I presume if Irv has the numbers, he has correct numbers. But let me say this. Mr. Kumer—and he rendered us great service—physically, for all practical purposes, left our division in December of 1978 and since that date has not been privy to or involved in any single condominium claim or rectification situation that I know of.

So while I will not quarrel with his numbers, I am quite prepared to say that we and one of my other counsellors, who is on the board of directors of HUDAC, are not aware of any single situation where there is any chance at all that there will be a shortfall in dealing with what HUDAC's statutory obligations are to make good on things. If

there were, I would be upstairs to see the minister so fast I would make my own head spin. I cannot quarrel with Irv's numbers; he got them from somewhere. But I can say without reservation they are in a position to meet all their obligations. If they were not, I would know pretty darn quickly if they were going to shortchange us on the condominium.

**Mr. Chairman:** Rather than prolong the debate of the committee, because I want to get on to the next vote, I am going to ask that the minister provide for me in writing a response to two questions. One, the issue of the difference in the maximum liability per unit on condominiums as distinct from private homes and what action he intends to take. Two, the issue raised by Mr. Kumer that the exercise of powers to make decisions affecting the rights on individual grounds of policy by persons or bodies other than the Legislature should be subject to political control. The point he makes is, and he quotes from Chief Justice McRuer in his report on civil rights in Ontario, "This is a breach of sound constitutional principles and gives rise to unjustified encroachments on civil rights."

I ask that the minister kindly reply to those two accusations or statements by Mr. Kumer and that he send me a written reply, which I would be happy to share with other members of the committee.

**Hon. Mr. Drea:** That is fine. I will give you the reply to the second one now; the Legislature passed and provided those powers. I will reply in detail anyway.

**Mr. Simpson:** I think if I might, Mr. Chairman, on the completion argument, Mr. Kumer is well aware as we are aware there is debate over the completion argument, the obligation to complete a building.

My counsel, who is a member of the board of directors, and I are involved with the Condominium Act and the general area of condominiums. I take the approach and have taken the approach that there are times when it would be the worst thing imaginable for HUDAC to say to a purchaser: "We ain't going to give you your money folks. We are going to finish the building even if it takes three years and you are going to stay there." It is sometimes the most enlightened thing in the world to say: "Hey, hold it, the guy's gone bust; the building is halfway finished; we do not want to leave you in there folks, sitting waiting for something to happen. Here, would you like to have your money back and go somewhere else and relocate in something that is satisfactory?" They try to adapt their

policies and deal with everybody's interest, including the purchaser's at the time.

If it was registered, the people are locked in. There are times when that is not the best thing to do. The best thing to do is to give them their money and let them locate somewhere else and finish the building as a clean proposition with the mortgagee coming in to advance the rest of his money and so on.

**Mr. Chairman:** Out of respect to other members of the committee, I do not want to prolong the debate on this. I think we could go on for another two hours. What I have received from the minister is a commitment, and it is hoped I will receive that answer before the Christmas recess.

**Hon. Mr. Drea:** You will receive it in a few days. It is simple to answer. If Mr. Kumer is such a lobbyist today, where was he up until last March or so when he left the government service? He could virtually have talked to the minister every day.

**Mr. Breithaupt:** I have a question of Mr. Simpson, if I may.

**Mr. Chairman:** Fine, then we must go on to the next vote.

**Mr. Breithaupt:** I thought I would take the opportunity while Mr. Simpson was back before us, to refer to an item on which I had asked questions of the minister earlier. That, of course, is with respect to the General Motors settlements. On May 29, I asked a question of the minister with respect to the limitation period under the Business Practices Act which had expired without any action that provided the motorists who were involved, as you will recall, with the problems of different sizes of engines.

The minister responded at that point to say, and I quote from Hansard at page 2298, "I said I was hopeful of giving a very pleasant announcement within a couple of weeks."

12:20 p.m.

I then asked my secretary to speak with Mr. Simpson, which she did on September 8, since he has been involved in this matter. Certainly more than a few weeks after the initial request in the House, I was advised in the notes of that call that at least as of that time there had been no settlement, no particular change of heart as far as General Motors was concerned, and the ministry had not agreed to the release which apparently had been asked to save General Motors harmless from any other individual claims.

**Hon. Mr. Drea:** No, please. That is not the release they want. The release they want is

that we approve of what they did. There is a big difference.

**Mr. Breithaupt:** I see. You are quite right; this note was not complete.

**Hon. Mr. Drea:** Implicit even in the General Motors proposals, if I understand correctly, is that while they are providing some compensation there is not a limitation on the individual as to what he can do. What they wanted was that the Attorney General would agree not to prosecute them criminally. He would not do that; they backed off from that. What they want is me to sign my name saying that I accept the substitution of engines as a normal business practice, and I am not going to sign it.

**Mr. Breithaupt:** That would preclude individuals from making individual claims as well.

**Hon. Mr. Drea:** No, it would not. Mr. Simpson may want to elaborate on this but, as I understand it, the General Motors offer always was that they would pay this, but it did not limit you as an individual. However, as a condition of doing it they wanted the governments—and in the United States they got it in most cases; I do not think they got them all. It is a different matter; it is a state criminal matter et cetera—you, as a solicitor, will understand it.

What they also wanted was the government—which is me in this case—to accept the substitution of engines and other parts holubolus as something that is normal in the industry, therefore, GM could never be prosecuted by the government for whatever they did regarding substitutions.

**Mr. Breithaupt:** No doubt they would also be able to wave that document before any judge, saying, "This is quite a normal practice."

**Hon. Mr. Drea:** That is the very reason I cannot sign—I do not mean as Frank Drea but as a minister of the crown. I cannot sign a document like that for rather obvious reasons. I thought you meant I would be formally limiting the individual. I would not be formally limiting him; de facto he would have no case whatsoever if the government had said, "This is accepted."

**Mr. Breithaupt:** As I say, Mr. Chairman, since some time has gone by for a variety of reasons—about five months or so—since that question was asked, I thought this would be a good opportunity, with Mr. Simpson now back before us on the other matter that Mrs. Campbell raised, to inquire as to what was new and interesting on this particular subject.

**Hon. Mr. Drea:** Very new.

**Mr. Simpson:** Mr. Chairman, I do keep in touch with the matter. I saw counsel for General Motors twice in the last two weeks, as well as their outside counsel, and we talked over the situation.

As the minister has said, we have been adamant about not giving that undertaking. We are still joined in that by New Brunswick and Nova Scotia, which feel exactly the same way. There have been some developments over the summer which bear on this situation. The Federal Trade Commission in the United States has commenced an action against General Motors with respect to the THM 200 transmission and alleged premature camshaft wear in engines made by the Chev engine division between 1975 and 1980, the 305s and 350s; these are the self-same engines as are in the 1977 Oldsmobiles and Pontiacs that would have been covered by this settlement.

I had two lawyers look at the individual release that people would have had to sign. One of the lawyers after a quick look said, "It sure as heck would foreclose any possibility of getting a settlement further to the one that would be afforded by the engine switch as a result of whatever may come out of the action of the FTC." The other lawyer said, "It is not nearly as clear as that."

The corporation's policy is, "Of course, we would pay up if something happened in the United States with the FTC." My position at that time was, that is not the point, that has never been the point and that is why we are at the impasse we are now.

**Mr. Breithaupt:** The difficulty surely is that it is the wrong engine, and not whether it is a faulty engine or not. Two different propositions are involved.

**Mr. Simpson:** Yes. But it does bear on the interchange settlement question and what the consequences were as well as on the nature of the minister's undertaking.

**Mr. Breithaupt:** With respect to the limitation matter under the Business Practices Act having expired, is this making further negotiations difficult—

**Hon. Mr. Drea:** No.

**Mr. Breithaupt:** —or do you believe still this is an ongoing procedure that eventually will be resolved?

**Hon. Mr. Drea:** The problem with the Business Practices Act is that, if we had proceeded under that, we would have had to proceed against the dealers, not GM, because the dealer level was the place where the deal

was consummated. In all the cases, the dealers did not know; General Motors had not bothered to tell the dealers. So had we proceeded under the Business Practices Act, we would have had to proceed against a great number of dealers, and the dealers would have had a defence that we were not going at the right source.

**Mr. Breithaupt:** And the dealer could not reasonably have known that was the case, because inspection would not have shown that.

**Hon. Mr. Drea:** He never looked. It was a GM product with a GM engine in it. He had been selling Oldsmobiles—I think there was another model involved too, was there not? Pontiac in certain smaller cases—he ordered the car, and the car came in.

Bear in mind how this was discovered. It was the one man in 1,000 in the United States who really believed the instructions when they came out. He went to get his oil filter changed after 300 miles or 500 miles—which very few new car people do—and they could not get a filter to go on it. They finally called the factory and were told, "Put on a Chev filter, because it is a Chev engine." They went out and told the poor man, who was absolutely horrified, because he did not buy a Chev engine.

That was the problem with the Business Practices Act. It was not a matter where we sat back and allowed it. What was the point? We would have been going after dealers who were entirely innocent in the matter. What remedy could we have obtained from the dealers? That was our problem. The remedy has to come from General Motors.

**Mr. Breithaupt:** What do you foresee as far as an early conclusion of this episode is concerned?

**Mr. Simpson:** I still believe our proposed wording in that undertaking was good wording. I still believe in our suggestion to them. We were prepared to say, "Boys, if you haven't done anything wrong, you have nothing to worry about." They want us to say, in effect, "Don't worry about what we did wrong; just tell us we are okay." I am taking liberties with the wording, but we were very close on the wording. Ours was that we would not say categorically, "You haven't done anything wrong and we won't do anything to you." We said, "If you haven't done anything wrong, we won't do anything to you."

They have maintained throughout that they have never done anything wrong. Therefore,



we took the view that they did not have a problem.

**Hon. Mr. Drea:** Actually, the limitations period under that particular act having expired, I think they can tell their American legal supervisors—and that is where the impasse is—that this really is an academic question, because the government is not in a position to go at them anyway.

12:30 p.m.

**Mr. Breithaupt:** Then what happens?

**Hon. Mr. Drea:** They pay the people the agreed-upon amount of money. The fascinating thing about this is that no one to this date—I hedge with “to this date” because there are some things under way in the United States which I do not want to discuss at the moment, which we are involved in as a ministry—no one has showed that engine was equal to, inferior than or superior to the so-called rocket engine. To the best of my knowledge, in every attempt at a court case, it has faltered on those grounds. In order to get damages, you have to show there were damages.

**Mr. Chairman:** There was a court case in Quebec where it was lost. Were those the grounds that it was lost on?

**Hon. Mr. Drea:** No. It was a small claims court case and it is not recorded. There are a number of them. You understand I am talking not so much about the Quebec one, which was done under, I think, the Quebec Civil Code, which may have been different. But I am talking about other attempts, not in Canada, but other attempts at a similar—

**Mr. Breithaupt:** The defence there often is that the engine was quite satisfactory for that car and nobody knows what it was—

**Hon. Mr. Drea:** No. The defences show what was the matter with the engine—and that is one heck of an undertaking for the individual. Bear in mind that particular Chevrolet engine—I have not heard of an Oldsmobile engine at Indianapolis, but I have sure heard of a lot of Chevrolet engines; the 350 engine. The basis for that question was, would the person have bought it had they known it was a Chevrolet engine rather than a rocket, but then your problem is that once having the engine, what did it do to the car? That is why I would never sign that substitution, even though I know that—

**Mr. Breithaupt:** You are not going to put your seal of approval—

**Hon. Mr. Drea:** No. I know in the automobile industry that all kinds of subassemblies are assembled into the vehicle, and the manufacturer whose name is on it really did not do all of it. But by the same token the customer is buying a product based upon the representations of the manufacturer and he is entitled to know. Now there are no more Chevrolet engines and they are all called General Motors engines. If the customer knows, he looks inside and it says GM engine and he puts his faith in GM and they have got some advertising, okay. But to merrily say that tomorrow we will put in a Brieklin engine in a car called the Oldsmobile, you tell the person about it. That is a pretty fundamental thing, because the guy might not buy a Bricklin.

I know now with world source and all of these things—and these are being thrown at me—but tell us that the engine came from Germany. It is no sin. Tell the man the engine came from Germany, the transmission came from Japan or something else came from Hong Kong if he asks. Do not give him all this jazz about it, because that may make up his mind. He may decide that he wants to go with another product.

But I would never sign a thing that you could substitute at will without telling the world that if you need components or a transmission it really does not matter—it does to me; I would hope that it would be made here in Ontario—but it does not really matter in the value where that component was made. But when you get to such fundamental things as an engine, which is identifiable by a brand name, then stick with it.

**Mr. Breithaupt:** I certainly look forward to hearing the resolution of that matter. I guess it will be in due course.

**Mr. Chairman:** I cannot understand—since the consumers and their association ask that the minister simply accept the proposal made by the company—why it is that the minister—was it a matter of principle? Or did you not listen to the—?

**Hon. Mr. Drea:** No. The minister legally cannot do it.

**Mr. Chairman:** But other provinces did.

**Hon. Mr. Drea:** I do not care what other provinces did. The minister here cannot legally tell you that you can do certain things with the full approval of the government in perpetuity. If they were to ask the minister if he would take a look at something that was done in such and such situation—this is precisely what Mr. Simpson has



been putting forward to them in this situation—then yes. But if you are asking me to give a car company a blank cheque in perpetuity that they can substitute or do whatever they want with the full approval of the government—that document says I accept it as a normal business practice—I cannot do that. I do not think I have the legal right to do it, and certainly as a minister I will not sign it.

I do not know which consumers asked that we sign it, but the people in this province who are affected—and we know who they are—have stuck with us. They are not advocating that I sign something for their money.

**Mr. Chairman:** The ones that I heard from, and certainly the association of car owners, certainly they are not.

**Hon. Mr. Drea:** We have never heard of them.

**Mr. Chairman:** You certainly must have heard of them, because I sent you comments from them asking that you sign an agreement similar to that signed by other provinces with the car company.

**Mr. Breithaupt:** What is the total number of vehicles involved?

**Mr. Simpson:** I do not have a recollection of it. I know you corresponded in respect of a couple of individuals. I am sorry, it just does not ring as any kind of association.

**Mr. Chairman:** I will pull the file. I think I gave you the position of that association in my letter.

**Mr. Simpson:** I think you advocated that position to the minister in your correspondence.

**Mr. Chairman:** Or I may have used that position and quoted it to the minister in estimates. But it was certainly brought to his attention.

**Mr. Breithaupt:** Just to finish up on this, do you have an up-to-date list now of how many vehicles are involved in Ontario?

**Mr. Simpson:** There are 678.

**Mr. M. N. Davison:** Before you carry vote 1502, can you tell me what HUDAC has to do with 1502?

**Mr. Chairman:** Under the Business Practices Act.

**Mr. Simpson:** My division counsel is on the board of directors. I am the one who worries about HUDAC. I believe it and the Condominium Act are both on our list—I hope. I looked at the book in June and I am sorry I have not looked since.

**Hon. Mr. Drea:** It was Mr. McClelland and Mrs. Campbell who asked that it be brought up at this time.

**Mr. M. N. Davison:** We were referring to the Ontario New Home Warranties Plan Act.

**Hon. Mr. Drea:** Yes

**Mr. M. N. Davison:** It is a declaratory act, not assigned to any particular division as of whenever the red book was published, which I assume was the spring of this year. Has it since been assigned to your division?

**Mr. Simpson:** It always has been. Possibly HUDAC would have dealings under the building code. But administratively it is dealt with under our vote.

Vote 1502 agreed to.

On vote 1507, liquor licence program:

**Mr. Breithaupt:** Mr. Chairman, this morning while we were dealing with those two brief matters that have taken us through the past two hours, I had the opportunity of reading through the Hansard reports of the procedural affairs committee for Wednesday, October 1. Certainly a great variety of topics within this ministry were discussed most thoroughly at that time. Even in making the summary by page number of all the topics, it would appear that Mr. Davison had an advantage over me at least in that he was present and was able to be involved in—

**Hon. Mr. Drea:** No, he was not. It was the other Mr. Davidson.

**Mr. Breithaupt:** It is the other Mr. Davidson? Then we are equal.

**Mr. M. N. Davison:** There is only one Mr. Davidson. The other is Mr. Davidson.

**Mr. Breithaupt:** I guess there was a typing error in here.

In any event, there are a large number of items and in order to save time I do not want to repeat some of the things that have gone through here. In the operations of the Liquor Control Board of Ontario, I noted the minister's observation that while there are comments or suggestions made as to a variety of themes and organizations and liquor matters within Ontario, there seem to be virtually no complaints or comments as to the operation of the Liquor Board of Ontario itself.

I was interested, in reviewing the annual report, to note that we are close to some \$600 million or so as not only revenues from the operation of the board but also with respect to sales taxes that are provided. These substantial amounts of money obviously are most important to the government of Ontario in its revenue.

12:40 p.m.

**Hon. Mr. Drea:** I wish the gallonages reflected it.

**Mr. Breithaupt:** Well, that is somewhat—

**Hon. Mr. Drea:** I would appreciate it if people would look at the gallonage. Gallonages are far more significant than the dollar amount.

**Mr. Breithaupt:** Oh, indeed so.

**Hon. Mr. Drea:** Gallonages cannot be inflated. It is not the onward and upward spiral that a lot of people tend to believe when they see the figures.

**Mr. Breithaupt:** One of the themes that did come to my attention and was referred to in this earlier area was the development of more of the self-service stores, an increase of some 26 in the last year, while the total number of stores only increased by two. Maintenance of permanent employees is good, which seems to me to show that not only are the stores much more attractive in their marketing procedures but also that the employment level to provide what I would presume to be better service is being maintained. There are some 1,100 locations now in the province, dealing not only with the operations of the liquor stores but also the beer and wine and indeed the kiosk locations, or as I notice—perhaps the creation of a new word by the minister—a winette.

**Hon. Mr. Drea:** That was originally what they were called. Nobody knows what a kiosk is.

**Mr. Breithaupt:** Oh, I see.

**Hon. Mr. Drea:** There is a legal definition which is something about—what is it—free-standing store. It takes about five lines.

**Mr. Breithaupt:** Hardly worth while, and now we have the word “winette,” which seems to mean whatever.

**Hon. Mr. Drea:** When you mention kiosk, they think you can buy a newspaper there; with winette, they know what they are buying.

**Mr. Breithaupt:** Winette, all right. Yes, she is a western singer, too, isn't she?

Without going through all of the detailed comments the minister made—and I think to good advantage, concerning this whole special occasion permit theme—I am just wondering if—

**Hon. Mr. Drea:** The problem with the procedural affairs committee was they called it LCBO.

**Mr. Breithaupt:** LLBO.

**Hon. Mr. Drea:** As usual, everybody thinks the LCBO is the LLBO, so there was nobody there from the LLBO. I had to—

**Mr. Breithaupt:** So you had to carry that.

**Hon. Mr. Drea:** I would be delighted if Mr. Cooper, the executive director and Mr. Rice, the chairman, could handle it directly today. The minister won't get involved in it at all.

**Mr. Breithaupt:** I do not want to deny the minister the opportunity to get involved with it.

Interjection.

**Hon. Mr. Drea:** I will handle it for hours, Mr. Davison, whatever your little heart desires.

**Mr. Breithaupt:** I think it might be useful to at least spend the minutes we have this morning trying to resolve any difficulties which may have arisen. I would refer members to the three or four pages of comments the minister did make, his review of the changes since 1975. I suppose, to be fair, I have to quote one paragraph which I think stands out from the minister's statements. It is this:

“I will tell you virtually any social organization, fraternal, service club, local, political, whatsoever, that is in the general area that its funds one way or another go to community betterment, which is the same thing as is in the Lotteries Act, is eligible for a fund-raising permit.”

I hope that paragraph quite clearly sets out the circumstances. The members of the House are familiar with the memo of July 9, which I guess has received wide circulation. It has received substantial editorial comment. All the members, I am sure, have received a variety of letters from various ethnic clubs, from legion branches, from minor hockey teams, from fraternal organizations. I think we have all received a great variety of letters. There are concerns obviously with respect to the memo that has gone out.

To put it mildly, there is certainly great confusion abroad as to what the memo means as to the differences in permits and as to the view, at least by these variety organizations—I could give you half a dozen names, and I am sure every other member could too. These organizations feel very much concerned and perhaps their prospects of continuing seem to them to be threatened by the new proposals. Could you just set out for us, Mr. Cooper, the answers I am sure you have been giving to the great volume of people who have contacted you, both

members and otherwise, and hopefully square away the difficulties so that the apparent fears of this great variety of groups are sorted out for their and our advantage?

**Mr. Rice:** Mr. Chairman, before Mr. Cooper makes a comment, I just wanted to mention the fact that there may have been misinterpretation of the information that has gone out as a result of recent amendments. Mr. Cooper has been holding meetings in various parts of the province. I have been meeting in Toronto with representatives of various organizations just to elaborate on the true purpose of the recent amendments. Having said that, I will turn it over to Mr. Cooper.

**Mr. Breithaupt:** Thank you, Mr. Rice. I think the time this morning will be well spent in clearing the air on this for everyone's satisfaction.

**Mr. Cooper:** I think basically the memorandum of July that went out was not an editorial; it was just a clear statement of what the new regulations were that were passed and what their effect was.

One of the things that happened from that was there appeared to be confusion by a number of people as to the different types of permits. That type of confusion never existed before. There was never any need for clarification. Those people who applied for fund-raising permits and who were entitled to them usually got them. We were aware of problems involving illegal profits under social permits, and that is presumably one of the reasons why the government saw fit to bring in the legislation.

What we have attempted to do is to communicate. We communicated, first of all, with all of the liquor representatives in the province, because 80 per cent of the special occasion permits that come to the board normally come through liquor representatives. They are a large communication vehicle as far as we are concerned in dealing with the individual groups and associations.

Secondly, we communicated with halls, because we had the names of the halls and we had the names of the member organizations that we could communicate to, to tell them exactly what the regulations were.

**Mr. Breithaupt:** When you say the halls, one would presume the variety of legion branches or the ethnic clubs with substantial development?

**Mr. Cooper:** For the legions, we communicated with the provincial command because

under our agreement with the legion we communicate with their branches basically through their provincial command so that they have control over their own organization.

What we have attempted to do wherever we have been involved in this is to sit down and explain the various types of permits, explain to those organizations which have concerns that they are and have been applying for the wrong type of permit and they would be entitled to a fund-raising special occasion permit, and in most cases, for almost 100 per cent of the people who have come to us with those types of problems, we have been able to solve the problem and put them into the right type of permit.

We have also found situations where people are into permits when they should be into permanent licences. I can think of a number of situations—one in Aurora, for example, where a theatre group was operating three days a week. They were getting 150 permits a year when they should have had a permanent licence. This type of change in regulations brought this more to the fore so we could deal with it. Their cost for permits went from something like \$5,000 a year to \$20 a year for a licence. There will be other organizations that will go through the same thing.

I have been meeting with groups in various areas to attempt to explain to them what the regulations say and what type of permit they should be applying for. In almost every case they have got the permit they needed, provided they applied for their right permit and provided they followed the instructions that we gave them. Very often we say: "Yes, we will correct the problem. This is what you do." They do not follow our instructions and they do not end up getting their permit.

12:50 p.m.

But if they follow the instructions they are given and legitimize the organizations—I think you have to recognize that first of all there are a considerable number of organizations out there that are operating in the guise of ethnic groups or social clubs or other types of other organizations that are not legitimate, they exist only for the purpose of making a profit for an individual.

**Mr. Breithaupt:** What sort of examples could you give me? Give me an example of the kind of circumstance.

**Mr. Cooper:** Let me give you an example without identifying the community.

**Mr. Breithaupt:** Yes, of course.



**Mr. Cooper:** We, as an example, have said that Parents Without Partners, or those types of organizations which are providing a social need to a community, are the type of organization which is acceptable for special occasion permits. First of all, if you belong to the provincial organization or a provincially recognized group, we will accept on face value that you are a member of this organization.

**Mr. Breithaupt:** That you are a branch of an organization.

**Mr. Cooper:** Yes, that is right. If you are not we then want to see your constitution, bylaws and your financial statement. With one of the first groups that came to us, we saw its financial statement and we found out that last year it made \$32,000 on running special functions. The person who organized the special functions got a salary of \$30,000; the group ended up with \$2,000. Looking behind that, the only purpose of this group was that one person organized all the functions and took the money and was actually in the business of organizing singles dances for his own profit. That is not the intent of the regulations; there is really no benefit going to that group or organization.

All we ask the group to do is identify itself to us once. Once it identifies itself to us, we will give it a number. From that point on, every time its representative goes into one of the LCBO stores to get a permit, he will be entitled to receive it on the spot. If it is an approved organization holding a function in an approved hall, they can issue the permit right on the spot in the store while the person is standing right there. So we have to go through the process of somehow identifying these groups. Most of them are identified.

Interestingly enough, our experience to date has been that those people who have been problem operators have disappeared almost completely over the last two or three months. They have gone out of the business. They have acknowledged that the profit has been taken out for them. On the other hand, there are a great many more people who are coming into the business—charitable organi-

zations and service clubs. We are now issuing more permits than we have before, rather than fewer, primarily because many people who could not compete before, because they did not have people whose job it was on a full-time basis to run these functions, are seeing it as a viable way of raising money for their organizations.

We do have some problems with regard to the new regulations. We can identify two or three things that are happening out there that must be resolved. As an example, some of the ethnic clubs like to have live bands. When they used to have live bands it cost \$300. There was no problem; they could even operate under the existing regulations. Unfortunately the cost of the bands has about tripled over the last three or four years. It now costs them \$750. They still want to charge \$1.50 at the door to let people in and run their bar at a profit for a social, or even a fund-raising if they were entitled to fund-raising, except that there is never any profit out of the organization.

How do you deal with that? Paying for the entertainment was not one of the concerns. The prices that are established are the highest prices in Canada. The same control exists in six other provinces and all the other provinces are lower. Those prices are enough to cover the hall, the liquor, the mix, the ice, the cost of the bartender. We have had groups who have operated to date and have come up with a profit of \$2,000 even on the regulated prices.

But it does not work where you get a group of 100 people who pay \$750 for entertainment and will charge only \$1.50 at the door because they are afraid the people will not come if they put their prices up. We have been meeting with a number of groups that have had that problem lately to try to find some resolution to it.

**Mr. Chairman:** I think you just started to open up a very important topic that the committee will want to deal with and we will look forward to seeing you tomorrow after orders.

The committee adjourned at 12:55 p.m.



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**From the Ontario Securities Commission:**

Bray, H. S., QC, Vice-Chairman  
 Knowles, H., QC, Chairman  
 Salter, C. R. B., QC, Director, Ontario Securities  
 Simpson, R. A., Executive Director, Business Practices Division

**From the Liquor Licence Board of Ontario:**

Cooper, R. W., Executive Director  
 Rice, E. J., Chairman





Ontario

No. J-25

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations

**Fourth Session, 31st Parliament**

Thursday, November 6, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, NOVEMBER 6, 1980

The committee met at 3:34 p.m. in room 151.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(continued)

**Mr. Chairman:** I recognize a quorum. The New Democratic Party critic of this ministry is tied up in the House and I understand some other members are tied up in other committees; however, I recognize that Mr. Breithaupt has the floor on this vote.

Before we start, I have handed out to members of the committee a copy of recommendations made by the subcommittee on agenda, and I hope that those members who are here will advise the other members of the committee that the subcommittee has recommended we sit, commencing Wednesday, December 3, 1980, to consider Bill 140, An Act to amend the Children's Law Reform Act, 1977, and that the committee instruct the clerk of the committee to place advertisements in the daily newspapers of the province advising organizations, groups and individuals of committee hearings and inviting submissions.

I propose to the committee now that we consider the estimates of the Ministry of the Solicitor General on November 13, 14, 20, 26 and 28. By November 28 we should have considered these estimates for approximately 10 hours, so you have roughly five hours remaining. I therefore propose that we consider Bill 140, as recommended by the subcommittee, on December 3, 4, 5 and 10. Does that meet with the acceptance of the committee?

Agreed.

**Mr. Chairman:** Does the committee also accept the subcommittee's recommendation that we instruct our clerk to place advertisements in the daily newspapers of the province advising organizations, groups and individuals of committee hearings and inviting submissions on Bill 140?

Agreed.

**Mr. Breithaupt:** Mr. Chairman, that also attends to the meetings to deal with the insurance bill on December 19 and 21, as I recall.

**Mr. Chairman:** That is correct. It was agreed yesterday that no advertisements were needed for that since the clerk would communicate with the convention. That should suffice. I believe that was your recommendation.

**Hon. Mr. Drea:** I thought I was supposed to contact them.

**Mr. Breithaupt:** Yes, the minister, I think, was going to contact them.

**Hon. Mr. Drea:** All I wanted was the firm dates of December 19 and 21.

**Mr. Breithaupt:** Yes. The insurance agents are meeting in Toronto over this weekend.

**Hon. Mr. Drea:** The convention closes Friday. I just wanted to have the dates rather than to leave it in abeyance. That is fine. Thank you, Mr. Chairman.

**Mr. Chairman:** Before we start vote 1507, I would like some indication, for the sake of the minister's staff, whether or not the members feel we will be dealing exclusively with 1507, or whether they feel we may be moving on to the residential tenancy question.

**Hon. Mr. Drea:** They are all here anyway.

**Mr. Chairman:** They did ask me whether they would be needed all afternoon. If the committee is not going to deal with this until tomorrow it is silly for them to sit here. We could simply invite them back tomorrow.

**Mr. Breithaupt:** Mr. Chairman, I am certainly content to spend the time we have remaining this afternoon on the liquor vote. This will leave us, in effect, with tomorrow morning's session on the rent review matters. We would certainly not get to that except for a few moments this afternoon in any event. I would be quite content if those members of the minister's staff would like to go on and do other things.

**Mr. Chairman:** I always like to see that we make good use of staff time. Therefore, we will see you tomorrow morning.

On vote 1507, liquor licence program:

**Mr. Breithaupt:** Mr. Chairman, as you will recall, yesterday morning we began with some questions and then received some comments from Mr. Cooper concerning the confusion in some persons' minds and in the minds of some organizations with respect to the new regulations that were announced by the ministry in that document of July 9.

Today those matters have taken an interesting turn. We have a statement by the minister, and I quote only one line: "The new regulations are revoked. They will not be enforced from today onward."

In many ways it is, I am sure, a relief to be able to tell individuals and organizations that, as the minister well knows, some of the results of the complaints and comments made have really been to the benefit of organizations because they have now been brought up to date on the proper licence they should have, or the proper arrangements they should make, at much less expense.

**Hon. Mr. Drea:** I would dispute the word "proper". What they have now is proper in a legalistic sense.

**Mr. Breithaupt:** A more suitable arrangement.

**Hon. Mr. Drea:** More beneficial.

**Mr. Breithaupt:** And certainly a great saving of fees to them.

I guess what does concern me to a degree is whether the simple revocation of this will sort out the problems as you see them. For example, the minister's statement commented that the intent was to eliminate the abusers, and that was certainly discussed yesterday. We are aware of circumstances where there are so-called organizations conducting fund-raising programs, the main beneficiary of which seems to be the person who organizes them and receives a salary or has his expenses paid.

My first question to the minister is, if the former regulations got the abusers out, how can you be sure that revoking the new regulations will not let the abusers get back in?

**Hon. Mr. Drea:** To be perfectly candid, I am not sure. I could tell you the answer is proper enforcement. By "proper" I mean resources and everything else that goes into enforcement. This is not a matter as simple as dropping in; it is audits of books, inspections of constitutions and so forth.

3:40 p.m.

Yes, you can get abusers. The regulations of July 1 were intended to provide additional tools, tools to make enforcement much more

efficient. They had been proved in six other provinces. They had worked exceedingly well in British Columbia, Alberta, Saskatchewan, Manitoba and, I believe, New Brunswick and Nova Scotia. I would draw to your attention there is a different type of liquor code in Quebec, so Quebec cannot be considered. Of the other nine provinces, they had worked exceedingly well in the ones I mentioned.

I could go on for two hours here and explain all of the difficulties. I tried to condense it in that statement. I think there are two things; one is the confusion. When there is confusion about what is meant it puts an enormous burden upon the delivery system.

Bear in mind it was the Legislature that decentralized the delivery system. Prior to the present Liquor Licence Act you obtained a permit only from Toronto. I think if these regulations had been instituted, and the only place you received the permit from was Toronto, there might have been confusion, but certainly the delivery system would have been more than adequate to cope with it because, after all, it would be coming into head office and those people understand not only the letter of the regulation but their spirit and their intent.

The decentralized operation, which is convenient to the public—that is why it was done and why it was approved by the Legislature—you have employees of the Liquor Control Board of Ontario, not the liquor licence board. It is the liquor store which is the point of issue. It put a burden on another organization and that delivery system—I am not just talking about the issue of permits—simply was not working.

At that point you must look at the legislation or the regulations, whatever the case. On the one hand, it is to meet an objective. It did meet that objective, because a great number of so-called "nonprofit" groups immediately dropped out and were never heard from again. They suddenly disappeared. People who had applied for permits for months, years, suddenly did not come in.

On the other hand, when it inconveniences, confuses, bewilders or frustrates those who have always obeyed the law, then I think you must look at the regulation. If it is simply not working, I think it incumbent upon the person responsible to remove it. While it is quite true these regulations were drafted by an agency that operates at arm's length, none the less the minister is responsible.

**Mr. Breithaupt:** But what do you put in their place?

**Hon. Mr. Drea:** This, indeed, is the problem. These regulations were not developed overnight in June. They were developed in stages during the tenures of every minister who has been responsible for the act since the new act was proclaimed.

Bear in mind too that prior to the 1975 act you could not have a fund-raising special occasion permit at all. It was prohibited by law. As you will recall from the debates, this was pointed out. Obviously there was no enforcement because there were profits. Everyone was putting "nonprofit" on the statement, but making a profit.

I suppose now, since we are reverting to the past practice, the question is what do we do? Well, we will continue to enforce it to the best of the board's ability. It will be difficult without this tool.

I suppose, in truth, the real concept that has to be looked at is if special occasion permits are necessary. I suppose that is the real question. My answer will probably startle everyone on this committee except the honourable member, who is familiar with the Liquor Licence Act. There is a reason why you need special occasion permits, even though they were developed at a time when they were really an alternative to the beer parlour. The beer parlour used to be the only place you could go.

**Mr. Breithaupt:** The only other place.

**Hon. Mr. Drea:** The only place. That was the only licensed place. There were a few lounges in Toronto and in the five cities that Mr. Drew brought in and over which he lost his seat, but beer parlours were the only licensed places across the province.

People quite often say: "Why do you need these at all? They don't have them in the United States. They don't have them in Quebec."

Number one, the permit is not the right to hold a function. The special occasion permit primarily enables the person representing the organization, or the person himself if it is for no sale, to purchase liquor at retail for other than his own consumption.

It startles people that the liquor act says you purchase liquor for your own consumption. There is no question about the fact that nobody looks into one's home. I am talking about the law. The law says it is for your own consumption. Everywhere else—that is, in the United States and in Quebec—you purchase liquor because you purchase liquor. There is a big difference in that.

Secondly, under our act you are limited as to where you can consume liquor. It is quite true you can consume it on your own

property, but we are talking about other than your own home. You cannot consume liquor in a public place other than licensed premises. In the ordinary course that sounds quite logical. That means a bar. I am not going to get into all of those definitions but that means a place with a beverage dispensing licence.

If you do not go there, what that permit says is you have the right to buy liquor for other than your own consumption, and that liquor will be served "between the following hours at this location", which is a licensed premises for that period of time. That, really, is a special occasion permit.

The public does not see it that way. The public looks at the special occasion permit as a piece of green or blue paper.

**Mr. Breithaupt:** Pink.

**Hon. Mr. Drea:** Well, you see, they are all tucked up in the back under the neon lights. It is a licence to hold a function.

Then we get into the problem of people trading. They say: "What difference does it make if we have the right to hold a function, but we go to this place and they say, 'We will run the bar for you and charge you nothing, but we will keep all the profits on the bar'? Why not?" But, you see, you cannot transfer that permit. You have to buy the liquor, not the bar.

Incidentally, one of the very real problems and one of the areas of confusion in this, as I think Mr. Cooper mentioned yesterday, is that four out of five special occasion permits are not obtained at the store by the individual or the organization; they are obtained as a convenience by a liquor or beer salesman. The public is going to say there is something sinister about that. There is not, because obtaining that permit is the right to buy the alcohol. We cannot tell an organization to rent a truck. That applies to 80 per cent of the permits issued.

**Mr. Breithaupt:** Yes. You try to make it as convenient as possible—

**Hon. Mr. Drea:** Yes, but, in truth, you have filled out an application.

**Mr. Breithaupt:** —within the framework that we have drawn up.

**Hon. Mr. Drea:** Once again, if you ask the person out there, he will say, "The liquor salesman got me the permit." All right, but what he has really done is fill out an application. He has been a vehicle. He has taken it to the issuing office and, upon receipt of the permit, has promptly entered into a sales contract to purchase the amount



of liquor. Then he transports it to the particular place. It is a matter of convenience. 3:50 p.m.

In one of the cases I had, I arranged for an issuance because there was confusion. The person did not go to the liquor store to pick it up. I could not understand. He could not find the liquor store. He was totally bewildered. That is when the dimensions of a third party as a convenience dawned on me.

I had one in London on the weekend, where, for one reason or another, the person involved—and I can't jump on him because he is a salesman for a distillery—completely bollixed up the application, got the wrong kind, quoted them the wrong law, et cetera, to the point where I had to give instructions for the persons holding that event to write across the top of the permit that it was a fund-raising permit and to mail it in. Then I made arrangements with the board to clear the records on it too.

Bear in mind, too, the historical reason for special permits. We devote a lot of time to this. It is nice to be able to tell everything about special occasion permits. We very rarely have this opportunity. They are either good or bad.

**Mr. Breithaupt:** I think it is a good opportunity to clear the air on this whole theme which is part of Ontario's mythology.

**Hon. Mr. Drea:** Well, no, it is our inheritance. You see, I could look at you and say I can straighten out this entire matter by making two changes to the liquor act: one, you can drink any place you want; two, you can buy liquor for any reason. Now nobody in this Legislature would vote for such a proposal—no one—because the implications are that you would suddenly have drinking in the parks, on the streets, in cars. Some people would then say, "Well, you are the author of your own misfortune if you do things like that." It would suddenly change a very regulated style of drinking, which I think is backed by the majority of the people in this province.

I draw your attention to the debates in 1975 as to whether wine should be allowed at picnics in parks. At one time this was brought forward as a very progressive measure, and not by the then minister. I think it was brought forward by someone in the opposition party at the time.

The public outcry was enormous. They did not want it. What they really wanted was an enforcement policy whereby if there was wine at a picnic in a park, provided the wine was consumed discreetly—that is, no fuss or

fanfare—the law would not be enforced, but if someone brought it in and was an annoyance, we would immediately move in.

**Mr. Breithaupt:** We were going to get some very prominent people arrested on the banks of the Avon at Stratford.

**Hon. Mr. Drea:** This is the point: "We don't want common rowdies on the banks of the Avon, so, Mr. Minister, please develop something whereby the common rowdies can be immediately arrested and jailed, but we, who are merely going through the experience of fine cuisine in the outdoors, will not be affected."

**Mr. Breithaupt:** The difference between a wino and a connoisseur.

**Hon. Mr. Drea:** That's right, or a rowdy and a middle-class theatre-goer. You know what the courts would say. You cannot do it. Also, the special occasion permit has different revenue implications. Let's forget the no-sale permits and so forth. When you buy a drink, you pay retail sales tax by the glass. In short, if the drink is \$2, you pay \$2.20, because there is a 10 per cent retail sales tax. Under the special occasion licences, you do not pay that tax. You pay a pre-collection levy in lieu of retail sales tax.

Why was that ever done? Historically, the reason it was done some 25 years ago was as part of the funds raised for hospitals. That was a much simpler day. I would not recommend it today.

**Mr. Breithaupt:** It was like the amusement tax.

**Hon. Mr. Drea:** Today it would cover about the first 20 minutes of operations in any given year, in any one hospital.

All right, here we are today. Number one, there is a wide range of beverage dispensing locations available throughout the province, unless the area is dry. Bear in mind—just one other thing. Let me throw this in. After the 1975 act was passed, one of the instant disputes was that the board said, "Now everything is clearly defined, we can no longer issue special occasion permits in dry areas."

**Mr. Breithaupt:** For example, to golf clubs. They were getting special occasion permits.

**Hon. Mr. Drea:** Up until then, and before everything was codified. It really should not have been done, but it was a convenience to the area. People were very indignant. "Just because the area has been voted dry" or at least not voted wet—"you have no right to stop us from getting a special occasion permit." By the same token, they would have violently objected had we licensed



premises. They would have said, "You are breaking the law."

**Mr. Breithaupt:** So it was a useful function.

**Hon. Mr. Drea:** Those places have since voted wet, by and large. Now, instead of the beer parlour—which in those days was primarily a male-oriented establishment. There are a few of them left today that are still pretty well male-oriented.

**Mr. Breithaupt:** There was one in Ottawa that tried to be, as I recall.

**Hon. Mr. Drea:** I am not saying they refused women, but they were male-oriented. They were designed that way. The structure was designed for that very thing, with ladies and escorts in another room, a smaller room. It was a copy of pubs in Belfast actually. I was fascinated by this some years ago in Belfast. I thought these were an Ontario invention. They were not. This is a Belfast and Northern Ireland licence.

**Mr. Breithaupt:** Do they use the same green paint?

**Hon. Mr. Drea:** Yes. You swore you were in the Ontario of an earlier age. Mind you, that was before the trouble in Belfast.

**Mr. Chairman:** You would have to have both orange and green forms.

**Hon. Mr. Drea:** No, at that time they had the record. On one side it was green, on the other side was orange. But we won't get into that.

All right, here we are today. There is a large number of licensed establishments, from the large hotels such as the Royal York to the smaller hotels such as the ones outside your community, in St. Jacobs and so forth. In the last 12 years—because they have really only been around for 12 years—we have seen the dining lounge or the licensed restaurant. There are all kinds of places. There are very few places in this province where there isn't the widest selection of drinking establishments—regardless of their category—available to the public.

At the same time, organizations and people want to do things. They are still going to have weddings, and they will want to put them in little halls. They cannot afford to have it in a licensed premises with all of the bills and so on, all of the necessities. Obviously, there is still a need for something else.

Now, I throw this out—and I want to put a caution in here because the media or somebody will read this in a few days: this is not an announcement. I want to say that I am merely thinking out loud. I would like the opinions of people like you on this mat-

ter. Has the time come to end special occasion permits?

By that, I mean should we have an alternative system of licensing, whereby the hall—be it a church hall, a service club hall, an ethnic hall, any kind of hall where special occasion functions are now held—would be licensed? People would just go there on the basis of wanting to have a function, whether it is for fund-raising or whether it is for no profit. Or, if it is not a sale, should you merely rent the facilities of a licensed hall, be it a church hall, an ethnic hall, a service club hall or a community hall?

**Mr. Breithaupt:** Would you forget then about the individual's having to make the purchase, or just require an address?

**Hon. Mr. Drea:** No. Two things would have to go. Number one, you would no longer get the exemption from retail sales tax. You would pay sales tax by the drink, just as you do every place else. In return, there would be no pre-collection levy because it would not be needed—no levy on the bottle. That particular establishment would purchase the liquor, or have it available, and would sell it. The terms and conditions of your licence, of course, would include that you collect the sales tax, and the licence could be terminated.

Secondly, the hall, just as with any place where a special occasion permit function is now held, obviously would have to be approved by local health, fire and other inspectors. Again, there would have to be some provision in there for notification of the police, because for one evening a place where alcoholic beverages are not usually served suddenly becomes a place where alcoholic beverages are served.

4 p.m.

One of the things with a special occasion permit too, and the requirement to purchase 30 days before for sale and 10 days for a no-sale permit, is that the police must receive notification that there is going to be a big event at this location where ordinarily there would not be. It is hardly fair to the police if there is a traffic jam.

I am not talking about anything unusual. The police certainly have the right to know that the operations at that address are going to be different on this night. It is only fair to them; they have to schedule their men. Obviously there would have to be some notification of police, because you are not setting up a seven-days-a-week commercial enterprise as you would be with a commercial licence.

You might still require some form of permit for events such as a company opening, because it would be conducted in non-licensed business premises. For instance, last night I helped open an expansion to a car dealership. Obviously those premises will never again be used for that function. This is a new thing for a business. For instance, when the Royal Trust opened its new offices, it was issued a permit for that day. Ordinarily they should not be serving beverages in their board room, but on that particular day the Lieutenant Governor was going to be there, et cetera. They were having what I regard as a normal event: a buffet and some wine or drinks, or what have you.

It is all part and parcel of the opening. It is not a daily business occurrence. You would still need some form of permit.

I have been pondering this for some time, Mr. Breithaupt. We have the special occasion permit system, which is for very valid historical and legal reasons, but I think we have to look at it in terms of today's society.

Mr. Breithaupt: I suppose a reflection of this problem is the simple volume of these applications and the kinds of locations that are showing up in the board's records. To take the Royal Trust example, it was a very pleasant afternoon's event but surely a rare application.

Hon. Mr. Drea: The next one they can get is for the closing, and I do not think that is going to occur.

Mr. Breithaupt: To take another example, the situation we discussed with respect to the south Waterloo naval veterans, here is a group that has been acquiring these permits every week at probably a cost of \$2,000 or so a year, when there was an alternative readily available for \$50 or \$20, whatever it might have been.

Hon. Mr. Drea: Twenty dollars.

Mr. Breithaupt: I would think this circumstance is the guideline to follow.

Hon. Mr. Drea: If I could just interrupt, the confusion there may have brought events like that forward, but that was a structured organization with premises. Most organizations are not structured and do not have premises. If every organization had its own premises there would not be much difficulty, but they do not. They will never be big enough clubs or organizations. They can only operate maybe five or six times a year; maybe once a year. If they started operating every week, I think you could validly go and say that it would be far more advantageous and appropriate.

Bear in mind we have done this in the past, for universities and colleges and so on. The old Bill 146 permitted college and university pubs and so forth to operate on special occasion permits. I am sure you will recall—

Mr. Breithaupt: Oh yes, I recall this in connection with the University of Waterloo.

Hon. Mr. Drea: We brought in Bill 146. When was it, Mr. Rice, 1974?

Mr. Rice: I believe it was in 1974.

Hon. Mr. Drea: You and I and Mr. Mackay used to make trips. It was one of the rare occasions when Mr. Mackay was acclaimed by the public as a progressive when it came to drinking. I was the bad guy. We changed everything for the universities.

Mr. Breithaupt: I suppose they were getting eight or 10 permits for various things every day.

Hon. Mr. Drea: The student pub was operating on a daily special occasion permit.

Mr. Breithaupt: Yes, that's right.

Hon. Mr. Drea: They were getting five permits a week. The big trouble was the mail strike: the permits could not be mailed from Toronto, and suddenly the week's rotating series had not yet arrived. And they were issued. This was not a printing press operation by the board. Under the old law they literally had people who had to look at each one, and, yes, they sent out five per week.

Bill 146 removed that. It put the responsibility on the president of the university, not only for the student pub but also for any rooms or halls on the campus that could pass the requirements of the act for safety, et cetera. The reason for that is that someone had to be responsible. There was a management contract signed with the students.

We thought that would take away a great deal of the special occasion permit applications, just from the totality but we found out we were issuing more afterwards. Not to that group; no, they were completely gone.

The elimination of permits has been very beneficial. I am not going to say there have not been very substantial objections. Communities objected, but we told them: "You cannot object, because a campus is a self-contained community and institution. Unless there are objections from within the campus, they cannot be heard." We took a considerable amount of controversy over that from people who had views on licensing and who lived outside the campus, but we made that

very specific in the act: The university or the post-secondary educational community was clearly defined and it had this type of permit because it was a community.

**Mr. Breithaupt:** Particularly where you were giving them, in effect, a blanket opportunity to do what they were doing on a daily basis. The law was not being changed for all operations within that community anyway.

**Hon. Mr. Drea:** The law was merely made more efficient and we ended all of the red tape, the bureaucracy, et cetera, that came with a very archaic system.

I am now faced with a problem; there are fraternity houses. I am sure from your past you are aware of one of the problems of fraternity houses.

**Mr. Breithaupt:** I know of a few problems.

**Hon. Mr. Drea:** Yes. In today's society this is a very difficult problem. A fraternity is not the low-rental or convenient place for a student it once was. There are other facilities. Therefore, to keep those fraternity houses going—and I think they are very valid places—they have parties, and they charge. The money goes into a common fund and it helps keep up the place. That is totally illegal under the act.

We are now working with the fraternity groups, primarily in Toronto but the same thing can apply in London and Thunder Bay. We are trying to work out a way by which they can charge for what is a normal party. It is not abused. There are no police records of Saturday nights being wild there. They are all friends. You just pay on Saturday nights and it is clearly understood the money is going into the building. We are trying to do something there.

The thing that has to be very clearly recognized is that if we abolish special occasion permits as we now know them there are going to be two significant areas of concern facing me. The first one is that I expect there will be significant concerns raised by churches and other groups concerned about the proliferation of outlets for drinking. I think they are going to raise that issue because it would really be a mass licensing. They are going to say, "You have literally put a liquor licence on every street corner," or something to that effect. "You have licensed service club halls, you have licensed ethnic halls, et cetera, that have never before had licences. Suddenly everybody is plastered with licences."

4:10 p.m.

**Mr. Breithaupt:** But the number of events approved for that location may be no different with the general licence than would have been accumulated by their applying for 14 special occasion permits over the year.

**Hon. Mr. Drea:** That is quite correct, but that is not going to be the way it will appear. It is going to be: "Mr. Minister, you have gone out and with the stroke of a pen you have established this many places. You have no control any more, whereas you were trying at one time to limit the number of permits per individual," et cetera.

Very little of this is logic. There is nothing logical when it comes to liquor policy, believe me. If you try the logical way, you are doomed to failure. I mean that. That is one of the difficulties. That issue will be raised.

Secondly, the licensed industry is going to go very true to route. They are going to argue, notwithstanding that now everybody would be paying sales tax per drink—and that is equalized rather than the pre-collection levy, that we have set up a class of competing licensed premises that does not pay its full share of taxes.

I do not want to say "no taxes," because some of them do pay some. It depends on their structure. But when you license a church hall, it does not pay taxes. Far be it from me, as somebody who would have to pay the bill if we started charging municipal taxes on church halls, to question that. I am not advocating that. I am just saying what the criticism is going to be.

**Mr. Breithaupt:** Employment too. There would be this theme as well.

**Hon. Mr. Drea:** I am not too sure. The unemployment issue will be raised last. Based on history, every time you attempt to streamline or to do anything in this regard, it is always the tax question.

**Mr. Breithaupt:** Property tax, not sales tax.

**Hon. Mr. Drea:** Property tax—notwithstanding the fact you have equalized the sales tax. Property tax primarily; I guess corporation tax to a lesser extent.

Even if the municipalities say, "Once you get that licence, you will pay a business tax," that might be one thing but it still will not be the major issue. They are still going to argue that they have an investment they pay taxes on, whether they make money or not, especially the property tax, and that these people are out there siphoning off and being able to charge less.

There is a counterargument: "If your premises could be rented for a reasonable amount and if it was the type of place these



people wanted to go, they would go to you." You can always raise the competition argument, but what I am saying is that this argument would come forward. It will not just be the hotel and motel association, neither will it be the restaurant and food service people. I am quite sure the beverage dispensers' union will bring the employment issue forward. They are going to argue on the basis of unfair or subsidized competition, and say that even if their members are working, they are not being paid what they possibly could be. Or they will raise the issue of the gratuity, which is really their wage substantially.

**Mr. Breithaupt:** Like the standby band from the old musicians' union days.

**Hon. Mr. Drea:** That's right. It is not going to be something logical. I think I can demonstrate this with just the little bit I have said today. I could give you chapter and verse.

In order to keep my sanity at times, I go back and do research. Quite frankly, I had quite a bit to do not only with Bill 146 but with the two liquor acts of 1974 and 1975. You will recall that the minister at that time became ill and I was his parliamentary assistant. I acquired a great deal of insight at that particular time, as did the chairman of the liquor licence board and the executive director of the board. At that time the executive director of the board was on the minister's staff.

To come back to what you asked, since this got rid of the abuses, will they not come back if we revoke it? Yes, there were abuses. People suddenly did not come back again. There were no complaints; they just disappeared off the face of the earth. Obviously they had been having a good run and recognized it was over. Also, I received some very interesting letters which said, "In the past five years, by use of nonprofit special occasion permits, we have raised \$50,000 for charity." They just never changed. It was always nonprofit before; you would get into trouble if you ever said it was profit because they would refuse you; just don't check the other box, even though it is the same price.

What are you supposed to do as the minister? Bring in the enforcement people and say, "Look, have these people really done four years of signing statutory declarations that the event is nonprofit?" I understand what is going on out there. I suppose if someone complained to the Ombudsman I would be taken to task in that I don't enforce the letter of the law; so be it.

So I guess we will have to take a look at abuse; and that abuse represents a loss of tax revenue to the Treasurer. But that is not the big abuse. It would be the same as if we had all kinds of illicit lotteries when private lotteries are now an integral part of fund raising. You take away potential revenue from legitimate organizations.

I suppose I could ask the staff of the liquor licence board to bring forward an enforcement program that would end the abuse. I take the responsibility for these regulations. They were not drafted by me, but I take the responsibility. Can I really satisfy myself as the minister responsible when a further set of regulations come in that there will not be confusion; that there will not be a problem with a delivery service where there isn't any uniformity by applicants? Each and every one of them has a different structure, a different type of approach. There is also the entertainment cost question that Mr. Cooper raised.

What do I tell the LCBO people when they have the guide before them? I cannot put across it, "Use your discretion at all times"; if I do that the rules are worthless. I have to ask myself those questions. I honestly do not think, now this has proved faulty, there is an enforcement tool the staff of the board can bring forward which would enable me to tell the Legislature that, barring some initial difficulties of a day or two, there will be no more problems. I suppose I could have stayed with this.

If I looked at it in a legalistic way, that I have to end the abuses, there will be some confusion. The corner has been turned on it, but I am constantly hearing from some substantial members of the Legislature about individual cases which have a peculiar structure and do not readily fit into a regulation.

I have been thinking about this a long time, Mr. Breithaupt. I thought about it again last night and I made up my mind I cannot say this problem will evaporate on the basis of what I know about the situation. And all I know about are the people who have complained. The entire Legislature, all parties, have brought to my attention what they know. What about the honest guy out there who figures, "Well, that's it"? He never complains; we don't know about him. The board does not know about him.

Then I find that because of the present system, which is convenient to everybody, a liquor salesman is able to convince the St. Andrew's Society in London, Ontario, that it cannot hold a fund-raising dance—even though it has held them in the past—and is



not entitled to more than 10 permits, even though the regulations say that organization, because it had them in the past, is clearly grandfathered. However on the basis of that information they are prepared to carry on an event with price controls and lose money, because they will not break the law, and then to stop all of their functions.

4:20 p.m.

I expect that by June or July there will be an outcry out there, "Mr. Minister, why don't you enforce your regulations?" and it will be incumbent upon me to come up with a fair and equitable approach in a relatively short period of time; one that is—and I underline this—acceptable to the community. If it is not acceptable to the community—not just the organizations, but the entire community—it will fail. No liquor policy that is not acceptable has a chance of doing anything.

**Mr. Breithaupt:** Indeed. And if it is not enforceable as well, it becomes ridiculous.

**Hon. Mr. Drea:** Acceptance is the key to enforcement. It is the same as prohibition: A noble concept that is not accepted by the community, no matter how diligent the attempt, cannot be enforced.

In the statement I made in the House today I think there are some significant policy statements and I would like to point them out. The first one is in the second paragraph: "Since fund raising by special occasion permit evenings is an integral part of the financing of community organization . . ." That had never been policy before. A special occasion permit was issued, supposedly, as a one-shot—for clubs, weddings, opening a new business and so on. We are saying now the profit from the sale of alcoholic beverages is an integral part of the fund-raising programs of community organizations. That is very significant.

**Mr. Breithaupt:** I think you are quite correct, Mr. Minister. This is the first substantial change in the pattern of the use, and I guess on occasion abuse, of liquor and other products in Ontario since the days of Ferguson's Foam I would imagine. Once you have accepted the fact you have virtually a routine occasion permit for organizations, expecting of course, that those organizations have a framework of responsibility and continuance, then you are certainly changing the theme of development.

**Hon. Mr. Drea:** I think it is a bit unfair to say I am changing. It is a recognition of what is there. Notwithstanding what the act says

or all the pious words in the Legislature, that is what is there.

**Mr. Breithaupt:** You have always been one to recognize the facts as they are. I think this is a good step.

**Hon. Mr. Drea:** And, you know, it is not very radical. We have a very firm policy definition for private lotteries, which is necessitated by the fact that the government itself operates competing lotteries, the so-called four public lotteries, Wintario, Lottario, the Provincial and Super Loto.

We have stated categorically that the issuance of a lottery licence, whether it is for a bingo draw or Monte Carlo, is an integral part of fund raising by community organizations in the province. It is already in the gaming field. We have a complete policy on social gaming in the province which says it must be social and not for profit; the proceeds must go to the community. Therefore fund raising by special occasion permit evenings—you can say by the sale of alcoholic beverages if you want to—is an integral part of the financing of community organizations.

Secondly community organizations will continue to operate without price controls or other restrictions. Strictly speaking I suppose this is a change. I am expecting a lot of mail and outcry in the next few weeks. But it is a very firm policy. It is in Hansard. It means that a special occasion permit is not now something you must apply for. Now we are saying it is a right, as long as—

**Mr. Breithaupt:** It is within a framework.

**Hon. Mr. Drea:** Yes, but I am talking about even within that framework. Up until now you could say, "There have been too many at location A. The place is going seven days a week. It must be curtailed."

Formerly we said any new organization that was starting up for fund raising would be limited to 10 a year for fund raising and 25 nonprofit. Now we have revoked that because it was meaningless without price control. Now there is no restriction. But I think we have an obligation to look at the very being of the SOP system. There will always be a place for the use of the SOP for business openings, for example.

There is a relatively new phenomenon. Companies which had receptions, even in licensed premises, used to give away liquor at no charge. Now, from concern that the overavailability of liquor may not be in the best interest of the people who are attending, they put in a nominal price as a bit of a deterrent to slow down consumption. They don't intend to make a profit, they just feel

they should exercise a bit of control. Then as with everything else, it is up to the individual.

**Mr. Breithaupt:** But it is a reminder in that sense.

**Hon. Mr. Drea:** Yes; 65 cents or a dollar is not going to stop anybody who really wants to abuse alcohol. But they want to be able to say they are doing something to prevent abuse. They do not want to feel responsible for it. There are a large number of these permits. Mr. Cooper perhaps can give us a ball-park figure. Would we have pretty close to 200,000 special occasion permits a year?

**Mr. Cooper:** It was 160,000 last year. It is up this year to about 180,000.

**Hon. Mr. Drea:** If you divide that by 365, it is roughly 500 a day—not every day, because Sunday has restrictions—which gives you an idea of the immensity of the thing. And there are not that many weddings.

**Mr. Chairman:** Do you have specific research, or is it just an interesting hypothesis that the price substantially affects the consumption?

**Hon. Mr. Drea:** No, that is their argument. We ask them why they are suddenly changing from a no-sale permit to a sale permit. This has come back to us. You can make it valid or invalid; these are the people who are operating the event.

4:30 p.m.

I am just saying this is an attitudinal response. I wish I knew, but I firmly believe that price has nothing to do with the abuse of alcohol. Low prices may make the path to abuse easier, but in the final analysis, if you are going to abuse alcohol, if it is \$20 a glass you will pay \$20 and walk 20 miles. If it is 20 cents a glass and right around the corner, and you are not going to consume more than one, that is that.

In the health area there is a lot of disagreement on that. There is concern about proliferation, but that is for community standards, I think, more than by consumption. I think the liquor industry itself, the hotel industry or the restaurant and food service people, on the basis of their own experience, would tell you there is so much disposable income for alcohol purchase, and if you have 1,000 licences or if you have three licences, it is merely a subdivision of that pot.

I know some social scientists disagree. No country in the world that has really priced it up, if they have priced it up as they have in

Ireland—they have priced up whisky but kept other prices down. They tried to get you to drink wine as a switchover in alcohol content.

What I am saying is there is room for the special occasion permit or what have you. I will go ahead and get the staff to work on developing the hall licensing system. You have to consult the police, no question about it.

**Mr. Breithaupt:** And the other organizations, of course.

**Hon. Mr. Drea:** And the other organizations. You consult them and tell them honestly what you are doing. Maybe they can draft something that will show you will bankrupt them all, which will have grave tax implications for the entire community. But I am going to do it. If it proves workable, then I will recommend it.

At that time significant concerns will be raised in the Legislature, on the one hand on the broad piece, and maybe on specifics, I do not know. If there is a justification for the present system—and by that I mean before July 1—of the special occasion permit licensing, in the end it may be nothing can take its place. You cannot justify it on its efficiency or its fairness or its equitability, but there is nothing else that can take its place. That is a poor justification, but in the end it might prevail.

I wish I could direct Mr. Cooper and Mr. Rice to start tomorrow and not to worry about the criticism, bring it in. But I cannot; they would be the first to tell you.

Mr. Rice has been there longer; he saw the old permit system. As vice-chairman of the board Mr. Rice was presiding over that aspect of it when people were merrily getting a permit that said clearly a profit could not be made. He knew that. Everyone in the Legislature knew it. We all went to events to raise money for whatever good cause. We knew where the money was coming from and we also knew there was a liquor act that said it could not be done, but that was wise discretion.

**Mr. Breithaupt:** We have had a lengthy involvement. There are many questions in other areas but perhaps others would like to discuss the special occasion permit theme.

**Mr. Swart:** My comments are shorter than they were going to be before we knew the announcement was going to be made in the Legislature today. I will only take 10 or 15 minutes, Mr. Chairman. I have a few comments I want to make and there are three items I would like to hear the minister's comments on.

I want to say I think it was a wise decision to back down on these new regulations. There is no doubt in my mind, from very many cases being brought to my attention, that they were hurting legitimate and worthy organizations. I think we would agree this has been the end result.

**Hon. Mr. Drea:** Before you arrived, that is what I said.

**Mr. Swart:** I am concerned, and I suppose somewhat displeased, that there was not more consultation with the various groups, particularly the Ontario Folk Arts Council, before these regulations were made. There may be some ongoing consultation, but certainly there was no knowledge on their part that this change was going to be made. I think if there had been a wide measure of consultation, you would not have proceeded with them at the time you did.

**Hon. Mr. Drea:** I do not mean to interrupt, Mr. Swart, but I will tell you, because of the complexity of the individual organizations, I do not think any consultation beforehand would have helped. My problem was not in consulting with people or saying, "You are eligible for a fund-raising permit, just check that box." My problem is all the organizations that really do not understand the complexities of the Liquor Licence Act and that would never complain, would obey the law and either not start up or cease, or whatever. That is my problem.

**Mr. Swart:** But there are organizations like the Ontario Folk Arts Council which represents the various folk councils and heritage groups in Ontario that do have knowledgeable people on the subject and I think could have warned of some of the pitfalls ahead of time. I think some of the concerns, some of the hardships, could have been avoided.

As I say, I am not going to take a great deal of time on that. I know you did get a letter, Mr. Minister, from Regional Folklore—perhaps it is not on your desk yet, a copy of it dated October 31 is on my desk—which represented Brant Regional Multicultural and Citizenship Council, Guelph and District Multicultural Centre, Hamilton Folk Arts Council, Kitchener-Waterloo Folk Arts Council, Oakville Multicultural Council, Port Colborne Folk Arts Council, St. Catharines Folk Arts Council and Welland Heritage Council and Multicultural Centre, signed by the president, in which they express very clearly their concerns and the hardship it is inflicting on the organizations affiliated with Regional Folklore of 1981.

I think perhaps it was impossible, for some inherent reasons, for it to work satis-

factorily. You mentioned some yourself. It is a difficult area and I am the first one to admit this, but even in the price setting itself it becomes extremely difficult because you have various brands of beer which sell at various prices. I have had this brought to my attention.

I may want to get Henninger but if we get Henninger we are not going to make any profits on the limits which have been set on this. In fact, we may lose money now the prices are going up. So even though some people may want Henninger instead of Molson's, they get in a stock of Molson's beer.

The same thing holds true for various types of hard drinks. You can have rye whisky which you can buy now for perhaps \$8.50 or \$9 a bottle but you get into a good grade of scotch and it is \$11.50 or \$12 a bottle, perhaps even higher. Those arbitrary limits, I suggest, are very difficult to work.

It may interest you, Mr. Minister, and I am not sure whether this has been brought to your attention and what the legality of it is, but you probably know that Parents Without Partners in Hamilton was refused fund-raising permits. There are three chapters, or whatever they call them, and they were all refused fund-raising permits. One of those chapters where they went ahead and sold at a higher price was warned that charges would be laid if they proceeded. One of the other chapters charged the 80 cents per ounce which was legal for the drinks and had a sign up reading 20 cents additional for donations to Parents Without Partners. This was done to raise money to take their children to the ice festival which was to take place in Kitchener.

4:40 p.m.

These are the kinds of areas involved, and I am in agreement with you, where do you draw the line? One area of real concern—and Mr. Rolling was there—was with regard to snowmobile clubs. I have had three of them approach me, one in Welland, one in Fenwick, and the latest one in Thunder Bay. All of these groups donate a substantial sum of money directly to charity. Then, in addition to that, the majority of their funds are used for safety, in some instances for trails, but for the community good. Yet they were refused permits.

I just say to you I think it was a wise move to rescind those regulations. I realize the difficulty of abuse. There was some. Perhaps it was not terribly prevalent in areas of which I am aware, but I realize there was some abuse and I am supportive of measures,



as difficult as they are, which stop that kind of abuse.

In that respect I would ask to have your comments, and perhaps some of your staff's comments, on some special occasion permits for benefits. People in the past, as you know and have already stated, have been getting them, when people get burned out of a house or someone breaks a leg—those kinds of things. They may be legitimate; there should be special fund-raising permits given for those kinds of events. I know of huge dances for people who have been burned out of their homes and were destitute.

**Hon. Mr. Drea:** Yes, but was it advertised that was the end result?

**Mr. Swart:** They use that method. I would like to hear your views on whether this can be changed so these things, which seem desirable—

**Mr. Breithaupt:** You want to accommodate those.

**Mr. Swart:** Yes. I know you have to draw the line. They seem to be desirable, and some I have been to I would say were wholly desirable.

**Hon. Mr. Drea:** I cannot give you a blanket—

**Mr. Swart:** No. I might mention three or four things and let you answer them. I would like to hear your comments on that.

Also, on the licensing of halls, doing away with special occasion permits, I have perhaps just one comment and one question. There might be some difficulty in this with regard to the great number of organizations, perhaps the majority of organizations, which, although they may be able to accomplish it through some arrangement by which the hall gets the licence and makes the money out of selling the drinks, it is more desirable to have the people who rent the hall make that profit. There may be some areas in which arrangements can be made if you did away with special occasion permits. I would like to hear your comments on that as well.

I also wonder if you have any further statement to make with regard to the proposed sale of wine in grocery stores. You may have something you would like to tell us on that. I recognize there is a real problem in this, but the small grocery stores now are being hurt—they are in my area—by one or two of the wine stores in one of the large supermarkets or shopping centres. I would like to hear your comments on that.

Those are my questions and matters for discussion.

**Hon. Mr. Drea:** Let's get rid of the wine question right off the bat. It is a matter of public record that approximately a year ago I made a proposal to cabinet. I want to make this very clear because everyone out there, including the unions, is now fighting with me.

My proposal to cabinet was that 12 per cent and seven per cent Ontario table wine be sold at retail, exclusive of the Liquor Control Board of Ontario distribution system, in independent grocery stores. An independent grocery store is defined as (a) nonchain, and (b) of certain dimensions which clearly separate it from the convenience or the variety store.

For the sake of a ball-park argument, the Lord's Day (Ontario) Act, really in a negative way, defines a food store by saying it cannot be open on Sunday. That would have meant no variety stores, no convenience stores and no supermarkets by the definition of StatsCan, which is, a chain is three or more.

**Mr. Breithaupt:** I was interested in following up on that one point. In looking at the Royal Commission of Inquiry into Discounting and Allowances in the Food Industry in Ontario that is—

**Hon. Mr. Drea:** In a negative way, he supports me.

**Mr. Breithaupt:** Yes. And, of course, this came rather as a surprise to me. While there are those of us who perhaps do not share all the conclusions that Mr. Justice Leach may have made, it was most interesting to find in chapter 10, after no particular comment on the subject that I could discern, the suggestion is made in a couple of pages that there be changes in the present regulations with a view to allowing any food retailer to sell wine.

I was not at these hearings and I do not know what evidence may have been presented from one or another on this particular subject, but it certainly came as quite a surprise to me to find this theme suddenly included in a report which I thought was dealing with discounting and allowances.

**Hon. Mr. Drea:** I must admit, since I did not see that report before it was tabled in the House and one of the three conclusions he reached suddenly was within my jurisdiction, I wondered myself. But he says, "While it was not within my terms of reference, it came up so often it was incumbent upon me to make a comment."

I tried to tell the media this and they really should let people read these things. When I looked on the first part which had



the three recommendations, I was quite hostile about the third one until I read it in context. It looks as though he is saying, "Sell it in all stores," but he is not. He is saying that since it is in—

**Mr. Breithaupt:** The recommendation is, "The sale of wine be permitted by both large and small retailers." Period.

**Hon. Mr. Drea:** Except in his long narrative he says it is already in the supermarkets at the kiosks. It has to be taken in context, that's all.

**Mr. Swart:** In general background philosophy—

**Mr. Breithaupt:** No; that is why it came as such a surprise to me.

**Hon. Mr. Drea:** It came as a surprise to me. He never asked me about it.

I did know, from copies of presentations that were made to me, the unions had a submission in there. If they did not, they told me they were going to.

**Mr. Breithaupt:** So certain themes did come up.

**Hon. Mr. Drea:** The independent grocers raised it; supermarkets raised it; I think the unions raised it. It is fair to say it was not in his terms of reference, but everyone wanted to talk about it.

**Mr. Breithaupt:** I think it is looked on as the magic solution to a variety of problems by a number of people.

**Hon. Mr. Drea:** I am not advocating it as a magic solution. But if I could just come back to it to put it into perspective, I make no bones about what I proposed and what I recommended and I will tell you why I recommended it.

**Mr. Breithaupt:** I think it would be useful to have that on the record.

**Hon. Mr. Drea:** The proposal was that 12 per cent Ontario table wine and pop wine—that is totally exclusive of the fortified wines—be sold at retail, exclusive of the LCBO distribution system in independent grocery stores. And I have defined what I meant—this is a proposal, ball-park figures—by that type of store.

4:50 p.m.

The reason I advocated it is—I have said publicly; I could even get the videotape of it, if you want—I consider the sale of wine by the large store, when the competing small food store cannot sell, to be immoral. I have been asked if I don't think it's a bit peculiar. I have said, "A little bit more than peculiar."

I suppose the truth of the argument is the supermarkets say, "We do not sell wine."

Legally, they do not. The space for that winette or kiosk in there is rented from the supermarket. It is a concession. A winery employee has to sell it.

**Mr. Breithaupt:** And only the varieties of that winery.

**Hon. Mr. Drea:** Only what that winery puts in there. If it is Andres, only Andres' product.

I inherited that. When I became the minister on October 17, 1978, on the afternoon of October 18 I was asked by the Liquor Control Board of Ontario, not the LLBO, what my position was on winettes. I said, "What are winettes?" They explained them to me.

It should not be a mystery that I did not know. Even a year later, the press did not know. It was a matter of record that when Quebeckers went to the grocery store for wine, the press wanted to know why we did not do it here. I said, "We have been doing it for a year." They immediately frantically ran out; nobody had even noticed. So obviously there was public acceptance.

The board had 25 of the kiosks or winettes licensed but they asked did I want to do it? In other words, did I want more, or was that going to be the total?

I went back and looked at the policy that originated those stores and it was in order to assist the Ontario wine industry. In the past the individual winery had been limited as to the number of free-standing stores it could have. I forget what the number was. Maybe Mr. Rice would know.

**Mr. Cooper:** At one time it was one outlet for each of the approximately 55 wineries that existed.

**Hon. Mr. Drea:** No, but they had stores.

**Mr. Breithaupt:** Years ago they could have stores.

**Hon. Mr. Drea:** They still do.

**Mr. Breithaupt:** I know, but the total got fixed.

**Hon. Mr. Drea:** What we are talking about is what is legally defined in the act as a free-standing store—for example, Chateau-Gai wine store on Parliament Street.

**Mr. Breithaupt:** The total was fixed some years ago.

**Hon. Mr. Drea:** Okay, it was fixed and gradually there was the concern that the Ontario wine industry was in bad days, as was the Ontario grape grower.

One of the arguments was that if they had more outlets to sell the product, it would get better acceptance. But they did

not have the money to build and rent high-cost stores to sell it. The winette was devised whereby they could take advantage of a very large shopping area, and clearly delineate a concession or a space. Among the things I mentioned before were, you cannot drink it everywhere; you cannot sell it everywhere either.

This kiosk would be operated by the winery. It was one of those things they might like to try to see where it went.

It went very well. Today the supermarkets tell me it is not going as well. I will tell you, it is not going as well as if they had the ability to sell off the counter.

On the basis of it working well for the Ontario wine industry and the grape grower, I said: "Let them. It has public acceptance. If I have never heard anything about it and it is working, then obviously the public accepts it."

Mr. Breithaupt, I was faced with another quandary when the independent grocers' organization, Mr. Warnock's organization, approached me during a normal, routine business meeting in my office and made a proposal about wine. I said I would study it and see. Then later another independent grocers' organization—there are many of them—came in with the same proposal.

I had this problem. Here we had the big supermarket that has an edge in everything and it had this too. The supermarket that was not big in total volume did not have it.

The other problem was the small winery, because the very reason for the winette was so people would not be buying wineries to get the stores.

You could only sell your own commodity, and the big four had a range of commodities they could sell. There were two small wineries, one of which only did fortified wine and has gone out of business, Turner's. There was another winery I was concerned about; we do not want wineries going out of business. They do not have the range of products that could put them in there, even though they do make somewhat of a range. Also, the cottage wineries are coming up with the new varietal brands based upon the hybrid varietal grapes and are a market for the grape grower, who has put a lot into getting that grape on the market.

Mr. Breithaupt: A kiosk is not the answer to that person's problem.

Hon. Mr. Drea: They cannot do it.

I have 125. Not all of those are in operation, but the licences are there so they can operate at any time; they have been cleared. If I were to continue and say, "No; we won't

do anything about direct retail sale of wine," then they were going to obviously escalate. By that time it would be a status quo: The supermarket had it and the little guy could not have it and there is no way around you could check.

So I put a freeze on those licences. There have been exceptions. There was a wine store that wanted to go into the Prince of Wales Hotel, for instance. We facilitated it; why not? It was in the Niagara tourist country; the space was available; it could not wait, et cetera. We said, "Yes." That really is a free-standing store; what we were talking about was a freeze going into food stores.

Cabinet has been pondering that since October 1980, notwithstanding the fact that today the supermarkets and the unions say there are only two kinds of stores: unionized and nonunionized; and, therefore, give it to everybody.

I notice there is now an association of convenience stores, represented by a very distinguished solicitor. They say that convenience stores are really food stores and they have only banded together in an organization for the purposes of wanting to sell wine direct.

Mr. Kerr: That is what will happen.

Hon. Mr. Drea: I do not know what will happen. I have a proposal I put before cabinet more than a year ago. In fairness to cabinet, there is a significant concern about the proliferation of outlets for sale—

Mr. Breithaupt: I think that we would all share that; I know I would.

Hon. Mr. Drea: —and no decision has been made. That brings you up to date.

I have no idea whether there will be no action at all, whether there will be a decision to sell it everywhere, or whether there will be a decision to sell it only somewhere. But, Mr. Swart, I want to make very plain that my recommendation was to give the small businessman in the food industry an edge. The convenience store, as far as I am concerned, has an edge because it can operate on Sundays and on holidays when the food store cannot. Forget even the chain. I am talking about the variety stores.

Secondly, I do not think the supermarket needs an edge in any way. They are quite able to compete quite normally.

Mr. Kerr: Have you any idea how many convenience food stores there are in Ontario?

Hon. Mr. Drea: Yes, we do. Now, obviously, if this went through not all of them would be eligible because the LLBO

would have to license. If the community did not want it, then you could not do it, et cetera. But I am not going to get into all the details on the follow-up. A decision has to be made.

**Mr. Swart:** I just wanted to get your views and that's fine. I guess my question today was—I know there has been a lot of representation made by various groups—whether they still are the same today; that was really my—

**Hon. Mr. Drea:** Are my views still the same?

**Mr. Swart:** Yes.

**Hon. Mr. Drea:** I knew what was coming. Some of the areas from which it has come have raised my eyebrows a bit, but I knew it was coming. I want to point out that I do not regard this as the panacea for all business. If we did not have wine, however it is sold, in the large stores, then I do not think I would be really considering the smaller stores. But that is in effect. There are 125 of them.

**Mr. Breithaupt:** You have got into it now and you have to see it through then.

**Hon. Mr. Drea:** Yes. The decision to do it was based upon agricultural policy in the province which was to come to the assistance of the grape growers and develop new markets by virtue of increased sales at a time when the grape growers in this province were in significant difficulty.

5 p.m.

One could argue that the grape grower is not in that difficulty any more. That is not to say he is rich, but he is certainly a lot better off than he was in 1975 or 1976 for a number of reasons.

My position has not changed at all. I am grateful to Mr. Swart for letting me put it on the record because it will save me having to dictate many letters. Issues get confused. Newspapers cannot put in everything.

Now to come back to your other questions in reverse order.

**Mr. Chairman:** I wonder if you could go through them fairly quickly because Mr. Davison is the critic and he has not had an opportunity to speak.

**Mr. Swart:** Can I just ask one thing? When you are considering—I gather you are not sure in how much depth yet—that the day of the special occasion permit may be gone and you are looking at other alternatives, if you ask the staff of the liquor licence board to take a good look at the

pros and cons of this, would you make the results available to members of the Legislature? I think all of us would like to have them.

**Hon. Mr. Drea:** I think, in fairness, the remarks I made on the matter today, pro and con, indicate exactly what is out there. Of course there will be concern raised by groups about proliferation; and there will be concern expressed by commercial establishments that it is unfair competition since the halls are not paying their full share of taxes. The pro side of it is it would relieve a very costly procedure—the pre-collection levy, the issuing of permits—and the collection of tax would be done, in the normal manner, by the retail sales tax.

I will give you the pros and cons you request. But you are going to have to bite the bullet. The cabinet is having to bite the bullet on the very same arguments with regard to wine.

You had another one on the hall licence.

**Mr. Swart:** I just voiced a concern on that.

**Hon. Mr. Drea:** I am going to be very blunt with you. When a hall is licensed a group will have to negotiate the best terms it can for rental of the hall. They are going to have to say, "Mr. Bartender, this is what we are going to charge for drinks." Probably the easiest way to do it is to have someone selling tickets. They set the price and their profit, if any, is the difference between the cost of the hall and the receipts.

It is not quite the same as running your own bar. It may very well be that an organization with a hall will want to do it. The problems were basically with the unstructured organizations that do not now have a permanent hall and never will have.

**Mr. Swart:** I suspect the majority of the special occasion permits at the present time go to organizations who do not have halls.

**Hon. Mr. Drea:** No, I would not say that, Mr. Swart.

**Mr. Swart:** There would be a lot down our way.

**Hon. Mr. Drea:** That is my problem. I can settle the ones with halls.

Let me describe to you a con that takes place from my experience with the private lotteries and bingos. One of the very real problems has been when you get a hall suitable for bingo, that hall starts off at loss-leader rates to organizations who hold a licence for bingo. Then it steadily increases its rents. This is going to be a very real



problem. My director of the lotteries branch, Mr. Fisher, has had many difficulties with it. Did you have a third question?

Mr. Swart: No, I think that was it.

Mr. M. N. Davison: Thank you, Mr. Chairman. I would like to move on to a new area of liquor policy in the ministry. I suppose I had better put it, "old area of liquor policy."

On March 30, 1978, some two and a half years ago, the minister's predecessor, the Honourable Larry Grossman, introduced in the House, by way of statement and by way of tabling, a document entitled, Directives on Advertising and Sales Promotion for Beer, Wine and Cider Industries. The purport of a section of those directives was to end, once and for all, lifestyle advertising of beer in Ontario.

I would like to put my argument to the minister that we have not done that in accordance with the following sections of those directives.

"(d) All such advertisements, commercials and endorsements shall be directed towards and emphasize the nature and quality of the product being advertised and shall not imply, directly or indirectly, that social acceptance, personal success, business or athletic achievement may be acquired or result from the use of the product being advertised. All such advertisements shall be directed to the merits of the particular brand being advertised so as to promote brand preference and the responsible use of the product and not the merits of consumption or the encouragement of excessive consumption of beer.

"(e) Advertisements must not suggest that the consumption of alcoholic beverages per se, or of a particular category of alcoholic beverage, may be a significant factor in the realization of any lifestyle or the enjoyment of any activity.

"(k) Advertisements shall not appear to suggest or recommend the consumption of beer, wine or cider prior to the driving of a motorized vehicle,"—and, what is more important—"or participation in any sort of activity in which the participant's safety is dependent upon normal levels of alertness, physical co-ordination or speed of response . . ."

That is enough to show what the directives were supposed to do and I think that any reasonable person will admit that for one reason or another, that has not been accomplished.

In the first 12 months that the directives were in force, I raised the matter specifically,

back on May 26, 1978, with the then minister. He put what I thought was a reasonable argument at the time I criticized him for the directives not being met. He said: "We have to have a 12-month lead time for this. It is not right to step into that industry and say, 'Okay, no matter what you spent on production costs of these ads, you take them off the air because these are lifestyle ads.'"

If I was not totally persuaded by his arguments, at least I was willing to wait the 12 months. The 12 months have expired and another 18 or 19 as well, and we still have lifestyle advertising of beer, by the definition of lifestyle advertising set out in the ministry's own directives. The famous Molson Golden ads that take place in a bar or a disco, if those are not lifestyle advertising talking about social acceptance, I—

Hon. Mr. Drea: A shuffleboard and a sweatshirt?

Mr. M. N. Davison: No, it is Molson Golden: "When it is Golden you go for it"; "If you are out of Golden," et cetera; the rather cute ads that—

Hon. Mr. Drea: When is the last time you saw them?

Mr. M. N. Davison: I see them all the time on TV.

Hon. Mr. Drea: I do not know what you are talking about.

Mr. M. N. Davison: I watch TV.

Mr. Breithaupt: They are quite effective, I think.

Mr. M. N. Davison: They are great ads, but they are lifestyle ads.

Hon. Mr. Drea: They do not sell much beer.

Mr. M. N. Davison: I do not know. They are really great to watch. I do not know what effect they have on selling beer. I assume clever industries like the brewing industry do not blow their money except when they invest it in the Toronto Argonauts.

Hon. Mr. Drea: For the sake of the record, the per-capita consumption of beer today in the province is 122 litres. Four or five years ago it was 133 litres.

Mr. M. N. Davison: It is an interesting statistic but it does not go to the point of the argument I am trying to make with you. You have directives that say you cannot have this kind of lifestyle advertising, which relates the enjoyment of an activity or the realization of a lifestyle with beer, that category or alcoholic beverage; and those Molson Golden commercials do exactly that. They have an exact and fairly direct implication.



The Labatt's Blue advertisements, which show people sailing off over the Rocky Mountains in hot air balloons or windsurfing on Georgian Bay are of the same kind.

**Hon. Mr. Drea:** That is in California.

**Mr. M. N. Davison:** I gave them the advantage.

**Hon. Mr. Drea:** No; they are all done in California.

5:10 p.m.

**Mr. M. N. Davison:** There are very few beer ads on TV that are not of that kind. The only one that I can recall was the 50 ad; they had the models who claimed it made the 50 music sound—

**Hon. Mr. Drea:** Like the Black Horse ad. The Black Horse ad, which is American, says it is the second best pleasure in life, as the lady winks.

**Mr. M. N. Davison:** There are examples of what might be called nonlifestyle beer advertising on the market. To be honest with the minister about this, he knows my preference is that beer should not be allowed to be advertised on television.

**Hon. Mr. Drea:** I did not know that, Mr. Davison.

**Mr. M. N. Davison:** If you do not, that is my preference.

**Hon. Mr. Drea:** Your party's or yours?

**Mr. M. N. Davison:** Mine. The question we have before us is not what my preference is in those terms, but why we still have lifestyle advertising. I would like to get today a commitment from the minister that he will do something to breathe fire and real life into those directives, to make sure that we do not have lifestyle advertising of beer in the province.

I am sure the minister knows all the reasons why his ministry and his predecessor took that initiative in the first place. I am not going to recount them all and the reason why we should not have lifestyle advertising, but I would suggest to you the evidence of those ads shows that we still have lifestyle advertising for beer.

To offer you a more objective source for that point of view, I refer you to a resolution of the Hamilton board of education, passed in January of this year, almost two years after the directives were initiated, which said, "That in the view of the Ontario Ministry of Education's express concern over the incident of alcohol abuse among students, this board petition the Ontario government to be consistent in this concern and to enforce its announced directives of all life-

situation advertisements which suggest that alcohol is a natural and necessary part of all sports and recreational situations."

It is not just myself. There are other people in this community who are concerned that the directives are not being lived up to. I would like to know why they are not, and perhaps after we deal with that I might seek a commitment from the minister that they will in fact be lived up to.

**Mr. Breithaupt:** Perhaps before the minister answers, I have a couple of points on that topic as well, if it is convenient.

I also received, through my leader, Dr. Smith, a copy of the board of education resolution that Mr. Davison has read into the record of Hansard. This area is indeed one of concern because since the statement of March 30, 1978, by the minister of the day, we find there are still areas that have not been attended to in the guidelines that were set out.

At the end of that statement, the minister says, "Over the next 18 months we will be closely monitoring these new guidelines to determine whether any further changes are necessary." Eighteen months from that statement was September 30, 1979, and we are more than a year past that. I think it is appropriate that we have some statement now about the plans the ministry has in this regard.

I recognize from looking at the directives as they came out, not only the sections under the rules concerning advertising quoted by Mr. Davison, but other areas as well, that there is certainly a pattern of what is to be done. It would appear, though, it seems to be honoured somewhat more in the breach than it is in the acceptance of these guidelines. A year beyond the 18 months has gone by and I too want to share my concern with the apparent lifestyle continuance that is occurring. I recognize that many of the advertisements are rather clever—

**Hon. Mr. Drea:** Are we talking about TV or are we talking about all advertising?

**Mr. Breithaupt:** TV particularly. They are certainly cleverly done, but—

**Mr. M. N. Davison:** I thought you were referring to all media.

**Hon. Mr. Drea:** Were you talking about TV or—

**Mr. Breithaupt:** I was talking about TV ads—

**Mr. M. N. Davison:** I think guidelines for all.

**Mr. Breithaupt:** —but the media themes generally, I think, some of which are under

your control and others which perhaps are not—

Hon. Mr. Drea: Print is under our control.

Mr. Breithaupt: Print is under your control.

Hon. Mr. Drea: Do you have any objections to the print ads?

Mr. Breithaupt: No.

Mr. M. N. Davison: I do, in that they reinforce—

Hon. Mr. Drea: Perhaps I could let Mr. Breithaupt finish and then I will just—

Mr. Breithaupt: No, I am just going to say it is a theme, of course. I share, I am sure, the minister's concern with respect to this whole pattern. And I think it will be interesting to hear the comments he has to make on this theme, now it has been raised.

Hon. Mr. Drea: First of all, just before I do, I want to make sure I understand the NDP critic correctly when he talks about lifestyle, it is not restricted to beer. It includes wine and whisky and so on.

Mr. M. N. Davison: There is no lifestyle advertising of hard alcohol on television.

Hon. Mr. Drea: Are you just doing television or are you doing all media? That is all I want to know.

Mr. M. N. Davison: The directives address themselves to all media.

Hon. Mr. Drea: But that was what you were reading from, Mr. Davison, and you just talked to me about beer.

Mr. M. N. Davison: I am sorry. I agree it should be all alcoholic beverages in all media, to the extent to which it is under the ministry control.

Hon. Mr. Drea: I guess I had better take the wine ads off. Just so these are answered now, I have a very limited period of time. You are talking about beer on TV as lifestyle?

Is it the word "lifestyle"—I am not quibbling, but people write me letters about lifestyle; sometimes it is beer, because whisky or hard liquor is not advertised on TV, and when many of these things came in, wine, although they were perfectly free to advertise it, had not yet begun.

Your submission was based upon what?

Mr. Breithaupt: I am simply interested in finding out how the directives have been applied, what monitoring has occurred, and how this has developed in the two and a half years since they were first brought in.

Hon. Mr. Drea: Perhaps Mr. Cooper, who has spent that period of time with it, and is

an expert on it—and by the way, I make this offer—I don't want to include it in the time of my estimates, but we will arrange it for your convenience. We are developing a commercial package, because it is impossible to look at—you know they are fragmented on TV.

We are in the process of developing—I was going to send around a note to members, but I will acquaint you with it now. Here were the commercials when that directive was issued. Here are the commercials of today. Here are the commercials that were ordered off the air.

That will probably be about a two and a half hour package. We will obviously have to do it down at the board. We are putting together the clips because invariably in the arguments people are talking about two different things, and nobody really knows when—they remember one that has not been around or they may want to challenge one that is around. We will be acquainting you shortly with the opportunity, and we will do it at your convenience.

Mr. Breithaupt: That would be most interesting. I think members of the House would like to see that.

Hon. Mr. Drea: But I just want to tell the critics that will soon be available. Now, Mr. Cooper.

Mr. Cooper: I think the great difficulty here is the individual's definition of lifestyle. Even though it is printed in here, it is printed in such a way that it is open to individual interpretation.

Having said that, when resolutions start, as they did for the school board, the interesting thing is we received a large number of resolutions. We wrote close to 30 letters and we said we would be glad to do something about it, but asked them to give us a specific ad to which they had an objection. "A specific ad you feel is a lifestyle ad to which you object, or to which the people on your board object." We had one response, and the response we chased down was a US ad on a US station.

5:20 p.m.

Part of the reality of what we are dealing with is in this city right here; 55 per cent of the people watch US TV over which we have no jurisdiction and over which, at the present time, there is absolutely no control in the US, although the Federal Trade Commission in the States have been here, have asked for our guidelines and are looking at them in terms of doing something in the States.

The ads which exist today, in comparison with the ads 18 months or two years ago, are substantially different. They are different in their timing, in the fact that two years ago you used to have a drink, get in a car and race it and then come back and have another drink. Every advertisement today goes through a cycle of an activity, following which, when the activity is over, almost 90 per cent of the ads show the sun going down, the day is over, "We're going back to the house to sit down after the day is over."

A lot of the ads to which people object, for example, the Molson's Golden ad you are referring to, are gone.

**Hon. Mr. Drea:** Why is it gone, Mr. Cooper?

**Mr. Cooper:** We turned it down.

**Hon. Mr. Drea:** And why did you turn it down?

**Mr. Cooper:** On the basis of a review we did.

**Hon. Mr. Drea:** No, the real reason, Mr. Cooper.

**Mr. Cooper:** On the basis of objections, on the basis—

**Hon. Mr. Drea:** The minister told you to get it off the air.

**Mr. Cooper:** You said, "Get rid of it."

**Hon. Mr. Drea:** This is part of the lifestyle. The minister did not regard the Molson's Golden ads as being within the directive. The minister simply said, "The swimming pool jazz where you were chasing a lady around the pool—they were great ads; they were funny." People were arguing that the guys in the jungle with the white Amazon were unreal; so they could not be lifestyle. Did I not say, "Out"?

**Mr. M. N. Davison:** On the other hand they had been approved under the directives.

**Mr. Cooper:** We received letters complaining about those ads 18 months after they were off the air. People still perceived they were there.

**Hon. Mr. Drea:** There are a number of Golden ads. This is why we want you to—

**Mr. Cooper:** We are talking about around-the-pool ads.

**Mr. M. N. Davison:** I would be quite happy to see one of the Molson Golden ads that is not a lifestyle ad, because I do not think I have ever seen one.

**Hon. Mr. Drea:** Two explorers going through the jungle after a white Amazon is lifestyle?

**Mr. M. N. Davison:** They certainly were, the Molson ads.

**Hon. Mr. Drea:** Two comics going through a jungle where a white Amazon lady comes popping out of a pool?

**Mr. M. N. Davison:** This is the same chain of ads in which the people are sitting around in the bar having witty conversation.

**Hon. Mr. Drea:** Those were not the celebrated Golden ads I am referring to.

**Mr. M. N. Davison:** You are talking of an older series of Golden ads. But the principle behind the Golden ads continued right through.

**Mr. Cooper:** The principle behind the Golden ads is humour, because they are directed towards a certain age group. Every beer product that exists is directed towards a certain age group and a certain level of income.

**Mr. M. N. Davison:** You will recall where those ads ended, by the way.

**Hon. Mr. Drea:** The ads you are talking about are the ads I am talking about.

**Mr. M. N. Davison:** They ended with a social acceptance after the fellows had found their Golden.

**Hon. Mr. Drea:** One of the arguments put out there was that this is such an unreal situation, it hardly can be lifestyle; you were not going to be exploring and immediately run out to buy a pith helmet and a pair of khaki shorts and go looking for an Amazon by a waterfall.

I just took them off on the grounds—

**Mr. Chairman:** You obviously have not been in St. George riding.

**Hon. Mr. Drea:** I have a business in St. George riding, thank you.

**Mr. Cooper:** One of the difficulties in this area, in the last conference I was at with the health people in Ottawa, was the fact that at that time, I think it was the federal government, proposed that we go back to showing only the label and a glass. It was the addiction research people who said: "Wait a minute. When you showed the label and glass, consumption was increasing 18 per cent a year. It is now declining. What are you trying to achieve?"

**Mr. M. N. Davison:** That is facetious at best, because we all know what the reasons were for changes in drinking patterns in Ontario. It has very little to do with the ads.

**Mr. Cooper:** That's right. But that decline in consumption is continuing in beer. There is another philosophical point of whether or not you want people to be drinking beer or hard liquor, which is another great discussion you



can get into with the addiction people and other people involved in that field.

If we can look at the ads themselves, I think you will see one of the things we have attempted to achieve is not to have lifestyle, so they say, "You will achieve a certain something if you drink this product," but not to make them so unreal they are not believable, so one could say: This isn't life; people don't do this all the time. People don't sit down and have a drink after they do a certain activity." You cannot make the situation unreal or people will not believe it and the ads become more attractive for that purpose. There are great philosophical discussions on that.

We reviewed all the ads with our board about three months ago. We went over and asked the board what areas they found objectionable in every ad outstanding at present. We are working on those areas now.

**Mr. M. N. Davison:** Could I put the question to you bluntly? Are you saying these beer ads we see on TV, specifically the new generation of the Molson Golden ads, arguably do not contravene (e) "Advertisements must not suggest that the consumption of alcoholic beverages per se or of a particular category of alcoholic beverages may be a significant factor in the realization of any lifestyle or the enjoyment of any activity?"

Can you arguably say they do not?

**Mr. Cooper:** If you look back at the previous advertisement, there were statements saying, "If you don't have this drink, you can't enjoy yourself at this function."

**Mr. M. N. Davison:** No, I am not asking you whether or not we are in a better or worse position than we used to be.

**Mr. Cooper:** I cannot think which current ads are on for Molson Golden because there were some on that are now gone. I am not sure what the current approved advertisements are for Molson Golden.

**Mr. M. N. Davison:** If you don't know, who does?

**Mr. Cooper:** I don't do them myself. We have a branch that approves the ads on a daily basis. They approve literally hundreds of ads per week.

**Mr. Breithaupt:** Just while you are on that point of what is approved, you said various ads have been shown to the board. I would expect that a brewery might have all of its ads on television stations in Buffalo, let us say; or, just to follow through as a possibility if that is not in fact the marketing strategy, as you mentioned, more than half the audience is viewing those stations in the Metro area on

certain occasions. Would those ads, even though they may not be used on Ontario stations, be brought to you as a pattern of business operation? Would you expect to see them and have your comments acceded to, even though those ads might not be broadcast on Ontario stations?

**Mr. Cooper:** The Canadian industry has been very responsive that way.

Of course, our problem is the US industry. For example, you could not show Mickey Mantle endorsing beer in Ontario; it just is not allowed. Whereas, with US beer, some of which may or may not be listed through the liquor control board stores, they are able to take people who are well known—Mickey Mantle, former basketball players, former football players—and identify them and have them endorse the product two days after they have left their sport. They can do those sorts of things. They also can do a lot of lifestyle advertising and product endorsements that the people cannot do up here.

It has not been a problem because the US companies had not had the inroad into the market. Now the market is changing. There are a number of US products coming into Canada through licensing with Labatt's.

**Mr. Breithaupt:** Budweiser.

**Mr. Cooper:** Budweiser and things like that.

With them you are getting US advertising. For example, the Budweiser commercials in the US were presented to us for approval. We would not approve them. And yet they are shown on Buffalo and you can see them every day. They say, "When you say Budweiser, you've said it all." We won't let them say that in Ontario.

**Mr. Breithaupt:** And yet, I presume, you are not going to threaten to delist or to upset their marketing arrangements, even though the market has changed.

**Mr. Cooper:** They have accepted that the ad has to be changed; that they had to do a different style of advertising in Ontario.

**Mr. Breithaupt:** In Ontario, but not to Ontario?

**Mr. Cooper:** Well, it's a different company—5:30 p.m.

**Hon. Mr. Drea:** This is a problem that you get into with products that once were not sold here. Yes, you could buy Budweiser for the past year in the liquor store but it was not sold generally. I don't think you can ask them to conform when they advertise in Buffalo, but you can suggest. As minister, I would not like to see 24 hours a day of adver-



tising for Budweiser. That they carry on their normal western New York marketing is really all you can ask.

What do I say to Miller? I presume one of these days they will want to come here. Miller really finesses and doesn't use personalities, as Mr. Cooper has said. That is, you don't use a football player but an exfootball player. He is retired so is no longer an athlete.

It's a great marketing technique, Mr. Breithaupt, for people our age. We look at a guy like Ray Nitschke for instance. He may be old, he may be broken down, but he takes us back to our prime.

**Mr. Breithaupt:** It is a souvenir.

**Hon. Mr. Drea:** And the ads are funny. It's also nice to see that some of the guys who have faded from the headlines are still alive and well. Paul Hornung tells you he is still training the same as he ever did, and he is crowding our age.

So, what do we with Miller? I would not want to see an ad here for a beer company, using a retired athlete, for rather obvious reasons. Supposing he took us to court on the human rights—

**Mr. M. N. Davison:** You cannot have endorsements under the rules in Ontario, period. It does not matter if he is prenatal, playing, dead or retired.

**Hon. Mr. Drea:** All right. But let me give you this case. I intervened in it directly. It involved Mr. Rimstead.

Mr. Rimstead, in my view, produced the most significant and high-quality beer ads ever made. In one, there was a temperance lecture by a man who did not drink, which was unheard of in the industry. Why pay to have someone say, very calmly, "I don't drink"?

Mr. Rimstead was denied the right to appear on those ads in the first instance because he was a political personality, on the grounds that he had once run for the mayoralty of Toronto. I took the view that Mr. Rimstead is a communicator.

**Mr. Breithaupt:** He is certainly a personality.

**Hon. Mr. Drea:** I guess what I am really saying is, I want to extend that invitation to see the commercials. I think the only real judgement that can be made in this area is "this is what was; this is what is." Are the directives being followed or not? I will abide by that test.

**Mr. M. N. Davison:** Frankly what used to be is totally irrelevant, Mr. Minister. What

is relevant is that we have a series of directives of your ministry which have been in place for over two and a half years and which are not being followed. We still have lifestyle ads.

**Hon. Mr. Drea:** Mr. Davison, that is where I quarrel with you. I think the board is following the directives.

**Mr. M. N. Davison:** All right. Let's take an ad we all know. Anybody who has watched the Hamilton Tiger-Cats—

**Hon. Mr. Drea:** Who are they?

**Mr. M. N. Davison:** —this season has seen the Labatt's Blue ads.

**Hon. Mr. Drea:** Who are they? I have given you a chance for a patriotic lecture in Hansard, and you are refusing me.

**Mr. Chairman:** You only have three minutes to answer.

**Mr. M. N. Davison:** Anyone who has watched the Canadian Football League in action on TV this year, which in Hamilton is at least a considerable portion of the public—and, I assume, among members of the assembly is also a large portion—has seen the Labatt's Blue ads.

The minister is familiar with them because he was able to correct me on where they were made. They are clearly ones where section (e) would apply: There is "a significant factor in the realization of any lifestyle or the enjoyment of any activity." And it does not matter whether the sun is coming up, going down or being eclipsed at the time, frankly. There is a connection between the enjoyment of an activity and the product. By my definition, by the definition of the Hamilton board of education, and I suspect by the definition of a lot of other people, that is a lifestyle ad. It is on TV, it has been "approved by."

**Mr. Cooper:** But there is nothing in it to say that you have to drink before the activity to participate in the activity.

**Mr. M. N. Davison:** You are talking about section (k), and I am talking about section (e). Section (e) talks about "a significant factor in the realization of any lifestyle or the enjoyment of any activity." When you show an activity like that and the beer together, it is obviously "a significant factor."

**Mr. Cooper:** The activity has been completed before the beer is introduced.

**Mr. M. N. Davison:** That has only to do with (k). I am not talking about section (k). I am talking about section (e).

**Mr. Cooper:** Yes, I understand that. But there is no drinking at the start of the adver-

tisement. There is an activity, there is a visual display—

**Mr. M. N. Davison:** It does not contravene (k), that is right. I agree.

**Mr. Cooper:**—following which there is a product statement at the end, the brand—

**Mr. M. N. Davison:** It is no contravention of (k). What I am telling you is it is a clear contravention of (e), because it shows the connection between the enjoyment of the product and the enjoyment of the activity.

**Mr. Cooper:** Our work has been to make sure that the activity was completed. There was no indication there was any drinking during the activity.

**Mr. M. N. Davison:** Any reasonable person knows that those are lifestyle ads. I don't want to mince words about it. You have directives in the ministry that are not being followed. You don't have any reasonable explanations why those ads are being permitted. I think that is wrong. I think that the minister, the person in charge, owes the public an explanation of that.

**Hon. Mr. Drea:** Mr. Davison, I don't think a public servant can answer that type of comment. That is your view. As the minister, I dispute it.

**Mr. M. N. Davison:** Then you dispute the view of a significant portion of the community.

**Mr. Breithaupt:** Now turn the clock back for a few moments. I have two questions the minister might like to comment upon, if not now, then some time later when he has the facts and figures. The first is with respect to the local option circumstance, recognizing the traditional reasons why a 60 per cent vote was needed and all that sort of thing.

**Hon. Mr. Drea:** Local option is sacred, non-negotiable, you name it. It is not going to change.

**Mr. Breithaupt:** No, I was just wondering the number of areas that are still generally involved in the province.

**Hon. Mr. Drea:** The riding of High Park for one.

**Mr. Breithaupt:** I know that one, yes. You, I and Mr. Drew know that very well.

**Hon. Mr. Drea:** We can provide you with that detail. You are talking about areas that are still dry, are you?

**Mr. Breithaupt:** Yes.

**Hon. Mr. Drea:** They are decreasing annually.

**Mr. Breithaupt:** By annexation I suppose.

**Hon. Mr. Drea:** No. Annexation requires a vote.

**Mr. Breithaupt:** I know, but that is the—

**Hon. Mr. Drea:** Probably the biggest reason why it has decreased over the last three years was the refusal to issue special occasion permits in dry areas. So they had to have a vote in the areas that did not truly wish to become dry. There is very little change now in the situation. But we can get you the figures.

**Mr. Breithaupt:** It is pretty stable now for those areas—

**Hon. Mr. Drea:** One of the difficulties is that you have fragmented areas that are dry within a region. Let's take the Niagara region. Twice this year I have had to put through regulations for cottage wineries that were in dry areas. Little sections around Niagara-on-the-Lake are still dry.

(The people do not wish to have a vote. But this would deny those business concerns the right to have their own little store, by their winery, which the very people who don't want a wet area do not want to do. There are still a few spots in the Niagara region that are dry.)

We had a very unfortunate occurrence about two years ago when a free-standing wine store was approved in the Peterborough area. Everybody at county council assured us it was a wet area. But six months later when somebody checked the metes and bounds they found it was a dry area.

There still are some dry areas. There are some as well known as west Toronto; there are some so isolated somebody has to look at an obscure map in the LLBO, because of regional government, annexation and a whole lot of things. Bear in mind the Barrie situation where because the Formosa Spring Brewery bought a farm, there had to be a vote.

5:40 p.m.

**Mr. Breithaupt:** Yes, the farmer and his wife sort of thing.

**Hon. Mr. Drea:** Yes. This would have been a big jolt to—I guess it was Harold Ballard who owned it at the time—it would have been a real jolt if they had voted two zip not to, having the money in their pocket. But you have areas down in eastern Ontario that are legitimately dry.

One of the concerns I have to address in some of the things I said before on the special occasion permits was that those people want a new type of vote whereby there are no licensed establishments, only special occasion permits.

In short, they are something like west Toronto, which accepts delivery. Every min-

ister here has threatened all the proponents of the preservation of that great dry area, "If you really want the law enforced we will stop deliveries to the homes." No, say all of the people, and there have been some celebrated ones. We will get you the figures, but it is not changing very significantly.

**Mr. Breithaupt:** I did not want to put you to a lot of difficulty over it, but it would just be interesting if you had some sense of—

**Hon. Mr. Drea:** I think there are still some around your region.

**Mr. Breithaupt:** Yes, there still are a few.

**Hon. Mr. Drea:** Within the regional government, this is the problem, the boundaries are not there.

**Mr. Breithaupt:** The other question I was going to ask you, which we probably will not have time for, is what are your general comments on the food-beverage ratio and the prospects as to how you see that changing? This may be something that will go on in the time to come.

**Hon. Mr. Drea:** I can tell you very simply I do not think it is a perfect formula. In some cases there are inequities. I have some concerns that it might have an influence towards keeping the price of the food up, but then the board would be able to show you that fewer than one tenth of one per cent of the licensees are affected. We can table a report on it.

Also we have looked at alternatives; it was not a 50-50 ratio but really that you could get a meal with the drink, get rid of the rubber sandwich.

We are constantly looking at alternatives; we are analysing a couple right now. They do not seem to be acceptable because we have to be fair. People who invested a heck of a lot of money because you had to provide a certain amount of food at the time now say: "The guy around the corner can put a microwave oven in with no investment. Thank you very much." This is one of your problems with a totally regulated industry; you cannot say compete—

**Mr. Breithaupt:** If you have some current information, I would like to see it, that is all.

**Hon. Mr. Drea:** We are no further towards a solution to the dilemma than we ever were.

**Mr. M. N. Davison:** What time are we going to adjourn?

**Mr. Chairman:** We really should adjourn at a quarter to six, at the very latest.

**Mr. M. N. Davison:** Then I have a brief question. The LCBO outlets have a card that can be signed by visitors to the province and

other people who do not have in their possession an age of majority card when they go in to buy a product. It is like an oath. The card is then countersigned, at least it was two years ago, by an LCBO employee. Is that system no longer in existence?

**Mr. Cooper:** I think it is gone. I think we convinced them it had no legal standing—you just cannot sign off your responsibility for selling to a minor in that manner.

**Mr. M. N. Davison:** What has been done to protect tourists to the province?

**Hon. Mr. Drea:** The LCBO uses common sense. If the person says he is not from the province, he may show a driver's licence or something.

**Mr. M. N. Davison:** So in cases of the LCBO, an out-of-province driver's licence or a passport would be accepted?

**Hon. Mr. Drea:** I am quite sure it would be, yes. Just let me say one thing. Notwithstanding an age of majority card, a document like a passport has always been accepted.

**Mr. M. N. Davison:** No, it has not always been accepted in the LCBO stores.

**Hon. Mr. Drea:** I am telling you it should be. Somebody made a mistake.

**Mr. M. N. Davison:** I agree it should, but it was not

**Hon. Mr. Drea:** Who? Tell me where and when. If somebody produced a valid passport of a foreign government in an LCBO store, I would like to know why the person in there refused.

**Mr. M. N. Davison:** I raised the matter with your predecessor. The Eaton Centre outlet in Toronto did not—

**Hon. Mr. Drea:** This must have been 1977 then, or 1976.

**Mr. M. N. Davison:** The summer of 1978.

**Hon. Mr. Drea:** I tell you it does not happen today.

**Mr. M. N. Davison:** If you want examples, I will dig them up for you.

**Hon. Mr. Drea:** All right, dig them up for me.

**Mr. M. N. Davison:** The last question is—

**Hon. Mr. Drea:** Excuse me, do you want a formal statement on that tourist business? I will get it for you. There is no one here from the LCBO.

**Mr. M. N. Davison:** No, my question now deals with the liquor licence board. Have you now sent a directive or an information sheet to licensed establishments in the province dealing with the question of tourists from out of the province?

**Mr. Cooper:** Yes, we have a number of directives that go out with pictures of all the various types of cards that have been issued. The licensee makes up his own mind whom he serves; he has that right under the act.

What we ask them to do is to make every effort to accommodate tourists by accepting passports, drivers' licences with photo identification, or one or two pieces of identification if they have them. We recognize it was in their purview to decide whom they would

serve and not serve. The act requires only that they make every effort to ascertain that the person is over the age.

A specific directive went out of our office requesting them to accommodate tourists because of one problem that developed, I think it was in Windsor.

**An hon. member:** Ottawa.

Vote 1507 agreed to.

The committee adjourned at 5:46 p.m.



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**From the Ministry of Consumer and Commercial Relations:**  
 Cooper, R. W., Executive Director, Liquor Licence Board of Ontario  
 Rice, E. J., Chairman, Liquor Licence Board of Ontario





No. J-26

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of Consumer and Commercial Relations



**Fourth Session, 31st Parliament**

Wednesday, November 12, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, NOVEMBER 12, 1980

The committee met at 10:25 a.m. in committee room No. 1.

### ESTIMATES, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (continued)

On vote 1508, residential tenancy program:

**Mr. Chairman:** I am going to recognize a quorum. I recognize the Liberal critic and I hope to put someone else in the chair and have him recognize me.

**Mr. Breithaupt:** I may have to cover for you, Mr. Chairman, since between the two of us we seem to have scared away all of our colleagues and the government members as well.

**Mr. Chairman:** As the new housing critic, I have a certain responsibility over rent review and I would like to ask the minister some questions.

**Mr. Breithaupt:** I will cover for you if you want to cover for me.

This morning I just want to make some general comments with respect to the operation of the Residential Tenancies Act. Once I have completed my comments, the minister may have a few thoughts and comments to make. As well, there may be some points with respect to some of the comments which may take some time to consider.

In discussing the Residential Tenancies Act, it is important to first discuss some problems that exist on the surface of the act itself before looking at the broader question of the commission's policies and the effectiveness of rent review.

The first question is the restricted application of the act. Section 4 of the act seems to set out as a policy of nonapplication for those who may be seen as very temporary residents or those who are receiving government subsidies for their accommodation. However, I wonder if we have perhaps gone too far in this direction when we exclude from protection homes for the aged, as distinct from nursing homes, and most student residences. While these accommodations may

be somewhat subsidized, the hardship caused by sudden increases in rent is still very real.

Perhaps of greater concern is the inapplicability of rent review to certain buildings because of section 134. I note particularly section 134(1a), which excludes from rent review all rental units owned or administered by or on behalf of the government of Canada or Ontario or a municipality or any agency thereof.

With the decision in Toronto to raise the rent of certain apartments on Spadina Avenue from 40 per cent to 60 per cent, we can no longer be satisfied that this exemption from review will be compensated by a voluntary restriction of rent increases. Under the current section 134, government ownership is in itself sufficient to isolate these units from review, whether or not the rent charged is geared to income. We are also concerned that section 134(1c) isolates from review those buildings no part of which was occupied as a rental unit prior to 1976.

Clearly the government is concerned that rent review might discourage the building of new complexes, and as time goes on the 1960 date will become less relevant. In any case it has been suggested by some housing authorities that there may be a danger with this exclusion creating two distinct housing markets, one of poorly maintained controlled rental housing and one of comfortable but extremely expensive rental housing.

There may also be problems with section 103(3), which states: "A commissioner is not disqualified from holding a hearing and determining a matter by reason only of the fact that (a) he attempted to assist the parties to the proceeding in settling the matter by agreement; or (b) he took part in any inquiry or inspection related to the dispute."

10:30 a.m.

This provision may have detrimental effects, both on the arbitration function and the hearing function. It would be very difficult for a commissioner who is engaged in extensive discussions towards a settlement not to come away with some prejudice for or against a given party. One could not expect then that

a hearing could commence in a spirit of impartiality. On the other hand, a party who knows what he says in the settlement process will have an effect on the commissioner at a hearing and he may not be willing to be as open during the settlement proceeding as he might otherwise be.

A similar problem of bias on the part of a commissioner could arise out of section 108, the section allowing the inspection of premises. While the procedural guidelines published by the Residential Tenancy Commission clearly indicate the commissioner has no right to inspect the building without the consent of either the landlord or the tenant, as the case may be, there is no requirement that the other party be notified about the inspection so that they can be sure the inspection involved representative portions of the building.

There are also some problems raised by section 95(2) of the act allowing for representative actions. These actions can be very important in providing access for a number of small interests against a large interest. The act, however, is very vague about the criteria to be used. What amount of common interest is enough to support such an action? Need all the tenants of similar apartments be in the same building, or is it enough that they have the same landlord? Even if the tenants have a sufficient common interest, to what degree will persons not present at the hearing be bound by the decision? If only those who have given written permission for a representative action are affected, as the commission's guidelines suggest, how do we deal with the potential for some inconsistent in-decisions? These are questions which I think should be considered and have to be answered before the legislation can be truly effective.

I now turn to some issues brought to our attention by some representatives of tenants' interests. It was pointed out to us that, while under section 126(4) the landlord is required to file all information he relies on to support his claim, all the commission seems to require is the filing of a cost-revenue statement in standard form. Upon consulting the commission's procedure manual we found that, in the case they present as a model case, only such a summary was required. This method in effect denies the tenant any useful right of cross-examination, for he is confronted with a set of net figures drawn up by the landlord. There is in practice no need to give a breakdown or to provide receipts or other evidence to back up the figures. Thus there is no way a tenant can challenge the accuracy of the landlord's statement.

The tenant groups feel it would be much better if the act were more specific in setting out what information must be filed. For example, it might set out that all receipts, audits and income tax statements must be filed with other material that may be filed at the request of the commission.

The second major complaint we have received is that the act does not relate rent increases to the present level of maintenance. Section 131 does allow the commission to consider deterioration or improvement of maintenance in considering rent increases. However, it is difficult when dealing with a large building containing tenants who have resided there for differing periods to get clear, consistent testimony as to change in maintenance levels.

It becomes especially difficult, given the commission's statement that, with respect to a section 127 application, the kind that exists for the reduction in rent by a tenant, and I quote from the policy guidelines, page five: "The standard of maintenance and repair is limited to those things that affect the rental unit in question. A rental unit on the ground floor would not be affected by the failure to repair the roof or a failure to maintain the hallway on another floor. Every unit could be affected by a failure to maintain facilities that are in common use with others, such as the lobby or the swimming pool."

The tenants should be allowed to present evidence on the substandard level of maintenance of a building without having to go the further step to show that this level came about as a result of deterioration over the past year. Tenants are also concerned about the whole issue of equalization of rents under section 131(4). The tenants admit that because of special arrangements between landlords and certain tenants, because of different periods for different leases and because of the widespread failure in the application of the old rent review legislation, there have developed inequitable variations in rents. They are concerned, however, that the commission seems to be constantly levelling up; that is, they are levelling the rents by forcing extreme increases on long-term tenants who have had no illegal increases and tenants who successfully fought increases in the past.

These people are then, within the space of a year, brought up to levels of rent established through increases which had not been challenged or which may even have been illegal increases. This has the effect of post facto justifying the previously unchallenged or illegal increases and penalizing those who have fought for their rights under the old

act. Any regularization of rents within a building must be done on a longer-term, more humane basis.

The final point raised to us by tenants' representatives was the issue of the composition of the commission. While certainly no claim of bias was raised against any individual member, it was felt that there was no one on the commission who can be seen as sympathetic to tenants' views. On the contrary, the fear was expressed, to us at least, that the commissioners' backgrounds were such as to make them naturally more sympathetic to the types of claims raised by the landlords. This was less important under the old Residential Premises Rent Review Act since there were appeals from a rent review officer's decision to the rent review board, half of whose members were tenant representatives. But under the new legislation this is not the case.

I would like now to address some of the problems that have arisen because of the failure of the government to proclaim certain sections of the act. We appreciate the constitutional problems that have made proclamation of the whole act impossible. But this has caused some further problems which must be looked into. Some of these arise because certain protections offered under the Residential Premises Rent Review Act, now repealed, have been placed in sections of the Residential Tenancies Act which have not yet been proclaimed. Thus a gap has developed because of the transition from the old act to the new act.

Perhaps the most serious of these sections deals with the reduction in service offered to the tenant. Under the old section 9, a reduction in service could be deemed an increase in rent and therefore could be dealt with as any other increase in rent. The new act, however, uses a different approach.

In section 28(1c), as yet unproclaimed, the act creates a responsibility on the landlord to maintain and provide all services and facilities promised by him. Section 28(2) then makes any substantial reduction in the provision of such services a breach of section 28(1). While this route may be a more appropriate one than that which was used previously, the failure to proclaim section 28 while repealing the old section 9 leaves the landlord free to cut costs by reducing services. As long as he then raises the actual rent charge by no more than six per cent, my understanding is that his reduction of services cannot be challenged.

We are also concerned that certain important sections of the act have not been proclaimed in spite of the fact that there

seems to be no problem as to their constitutionality. For example, there seems to be no reason why section 33, requiring the posting of a rent schedule in the filing bureau with a central registry, should not be proclaimed. It is especially baffling that this has not been done given that the minister indicated at last year's estimates that he considered such schedules an important component in improving the enforcement mechanism of the rent review system.

It is also unclear why section 9(4) of the act, requiring that interest shall be paid on any rent deposited in the amount of nine per cent, has not been proclaimed. Similarly, why is section 7(1) not yet in force, prohibiting conditions in a lease making certain amounts payable for breach of other conditions of the lease?

These are just some examples of many sections of the act which have not been proclaimed and which do not seem to be connected with the constitutional question of the commission's power to make orders.

I would like now to move on to a consideration of the act itself—to consideration of the policy guidelines developed by the commission. On the whole, the commissioners should be commended for sensibly outlining how the commission should deal with matters which the legislation has chosen to leave vague. For example, they have taken a very sensible approach on the question of matching capital expenditure to the time period over which they will be useful.

There are, however, some policy statements which I find disturbing and which I wish the minister to comment upon. First of all, there is a statement in rent review guideline nine that renovations of a unit may be so substantial as to effectively create a new unit. In this case section 128 would apply so that the rental unit would not be subject to the normal six per cent increase. Indeed, in this situation a landlord would not even have to show that his expenses justified the more than six per cent increase.

Perhaps even more disturbing is the attitude which the commission seems to exhibit through rent review guideline 10. When the act states that a tenant need not pay certain rent increases, the commission will not hear an application of the tenant. For example, on page two of that guideline with respect to a tenant's application for reduction of rent, the guideline states: "If in the absence of agreement between the parties there also has been a failure to comply with the notice requirements of section 66(1) of the act, the commission has no jurisdiction to deal with the matter under section 127 because the



intended rent increase is void." The tenant's response to the lack of proper notice is simply a refusal to pay an increase for which he is not liable, not to dispute something that does not exist.

Further on in the same guideline, the commission states that a section 127 application applies only to increases of less than six per cent. Such a limitation does not exist in the act, because any increase of more than six per cent could not legally be instituted without a landlord application.

10:40 a.m.

What both these statements fail to consider is that tenants as a practical matter want and need some authority to pronouncement of their right to withhold the rent. Most tenants are not so well versed in the intricacies of the act, nor so secure in their tenancies, that they can confidently withhold their rent unless there has been some such pronouncement.

This is especially true when there may be questions of the applicability of rent review to the rental unit in question or whether, under the aforementioned guideline, this unit will have been deemed to have undergone such extensive renovations that it is, in fact, a new rental unit.

While on the subject of policy guidelines, I wish also to point out to the minister what we consider a rather serious omission in response to a constituent's problem concerning an apartment at 800 Richmond Street in Toronto. Mrs. Campbell, in last year's estimates, brought up the question of how legal costs in a rent review application were dealt with in further rent review hearings. At that time she said, as reported on page J-286 of Hansard: "Mr. Chairman, I wonder if I could raise a point. The things which have been happening under rent review—I am talking now specifically about the cost pass-through concept—and there are a series of problems, as I see it.

"First, there is the case of a tenant who goes under the landlord and tenant legislation and wins; costs are awarded to the tenant. According to the complaints I have had, the tenant is not given an opportunity to make that clear at the time of any hearing. Those costs are incorporated as costs to the landlord and they assist in his entitlement to an increase in rent.

"Second, there is the opposite of that where a tenant loses. Costs are awarded to the landlord under the order and those costs appear, so the allegation goes, in the cost-analysis figure of the landlord. It seems to me in the first case you have a situation

where in effect the rent review board has overruled the court in the cost situation."

This omission seems to us to be very serious, especially given that Mr. P. C. Williams, speaking for the minister, said in response to Mrs. Campbell, as reported on page J-287 of Hansard, "As you pointed out, the situation does not seem fair; where a landlord wins, he wins, and where he loses he wins on his costs."

This brings us to the issue of the effectiveness of the rent review program. Last year at this time we presented figures which showed that approximately 70,000 to 80,000 rental units, or about one quarter of the Metro Toronto rental units, experienced illegal rent increases. This figure was obtained by taking the total number of Metro rental units, finding the number experiencing more than six per cent increases as established by the Ministry of Housing's rental market survey and subtracting the total number of units not governed by rent review or units whose rent exceeded the guidelines as a result of a hearing under the old act.

Similar calculations for the past year indicate that illegal rent increases amount to some 20 per cent of total rent increases for Metro. This year, performing this calculation required even more approximations than in the past, because we have had to extrapolate the 1979 annual report which dealt with the period between January and November 1979 to a 12-month basis. This became necessary because under the new rent review legislation it is no longer possible to determine the number of rent increases permitted by the commission to take effect in a given year.

Upon contacting the commission, we were told that computer records were kept only on the number of rent increases allowed and that only on a yearly basis. Since most increases now are whole-building increases, it is not possible to assume that all the units which have been granted increases of more than six per cent are allowed increases to take effect within the year. Hence we cannot assume that the number of units can be deducted from the total number of units experiencing more than six per cent increases to yield the number of illegal increases.

This raises two fundamental questions. First, why, based on the admittedly rough calculations for 1979, have there apparently been so many illegal increases? It is hard to accept the argument given by the minister last year that most of these increases occurred in buildings of less than six units. When one breaks down the number of illegal increases between complexes of more than six units and those of less than six units for 1978,



one finds that 51,000 units experiencing illegal increases were in buildings containing more than six units. This means that, when one factors out the new buildings, approximately 40 per cent of the increases came from larger units.

We also question whether the introduction of the rental schedules will in themselves solve the problem as indicated by the minister last year. We are, as I already mentioned, still awaiting the proclamation of this section. In any case, there appears to be no authority granted in the act for the commission to act upon the results of any spot checks of the registry along the lines the minister suggested last year.

The second fundamental question raised is why, when a commission is run as a public body, using public funds, there is no information provided by which its effectiveness can be accurately evaluated. Indeed, it seems any information available has been specifically tailored to make an effectiveness evaluation impossible. I note that the rental market study of rent increases prints its statistics using categories of five per cent to 7.5 per cent increases, thus avoiding giving any information about the number of illegal increases. To get the information, a specific request to the ministry was required.

Furthermore, we have reason to believe that in its questioning of tenants the rental market survey did obtain information on the number of units which had undergone rent review in the last year. Thus it appears that information was available to the ministry to produce figures on how many of the increases of more than six per cent were increases justified under rent review. As I understand it, this information has never been published.

The failure to produce this available information appears to be an affront to the public which has a right to know whether rent review is working, and it is an affront to the members of the committee, for without such information its ability to monitor the government as the people's representatives is severely curtailed.

Finally, in considering the effectiveness of the Residential Tenancy Commission, we must consider the performance of its role of educating the public set out in section 82 of the act. Where an act such as this one depends for its enforcement on tenants knowing their rights and challenging illegal increases, it is essential that the commission treat this part of its role as seriously as its adjudicative function. While the commission does handle a large number of inquiries annually and it does have available on re-

quest its new 16-page booklet entitled *Rent Review: Here are the Facts*, it has made no attempt to go out and educate the public. On request, information is given but there is no attempt to distribute information to tenant associations or large apartment complexes.

In summary, we have some serious concerns over the present rent review situation, some of which arise from the act itself and some from the peculiar limbo status of parts of the act. There are gaps in the act which need to be addressed and there are policy statements in the procedural manuals which should perhaps be rethought. Finally, there are serious questions as to the act's effectiveness and to why information as to effectiveness is not available.

With those remarks, I hope the minister and his staff have some areas to consider as this rent review continues for certainly another year. That completes my remarks.

Mr. Chairman: I would like to leave the chair for a couple of minutes. Mr. Davison, would you take the chair?

**The Acting Chairman (Mr. M. N. Davison):**  
Mr. Philip.

Mr. Philip: There are a number of issues I would like to bring up with the minister, issues which I have dealt with in correspondence but which I think would be valuable for the record. Some of the issues were touched on by the Liberal critic.

One of the issues I would like to deal with is the problem of the increasing prime interest rate and the fact that is not being taken into consideration under the interest required of the landlord on the deposit. Surely it seems sensible at a time of fluctuating interest rates to have the interest rate related to the inflation rate or to the rate at which interest is fluctuating.

There are a number of sections I would like to discuss with the minister. Under section 129 of the act, the Residential Tenancy Commission has the right to roll back rents but the tenant who is aggrieved must apply. I have pointed out to the minister in correspondence a case of one particular landlord who the residential tenancy commissioner in my area agrees is a flagrant violator in terms of illegal rent increases, but there is absolutely no power under the act for the residential tenancy commissioner to conduct an investigation into the alleged rent increases that are going on. It rests with the tenant to go after the landlord through the commission when he feels he has unfairly paid an illegal rent increase.

10:50 a.m.

Surely there must be some penalty on those landlords who continue to flout the law. I do not accept the argument made by the minister in a letter to me of August 26 in which he says specifically: "What the commissioner will not do, however"—and this is the basis of the complaint from the Federation of Metro Tenants Associations—"is deal with the question of illegal rent increases at a hearing called for another purpose. Specifically this concerns hearings held as a result of the landlord's application for rent review under section 126 of the act. This hearing deals exclusively with the question of future rent increases."

He goes on to say: "You will recall that in order to ensure that the commission operates in a fair and judicial manner, a section was included in Bill 163 to make the proceedings of the commission subject to the Statutory Powers Procedure Act. One such feature of that act is the requirement that all parties in the case must be given notice of the proceedings including the intended purpose of the proceedings."

Legal counsel I have consulted lead me to believe that there would be no violation of the Statutory Powers Procedure Act under this. The landlord clearly understands when he goes into a rent review case that a base rent must be established. He understands that it is the responsibility of the residential tenancy commissioner to investigate and find out what that base rent is and that it is reasonable that the onus not be placed on the tenant.

What is happening is that under section 108, even where you have a whole-building hearing where the commissioner has that obligation to determine the legal rent, the commissioner invariably accepts the rent scale on form 2-A. When the tenants protest, they are simply told to file under section 108 if they have any protest. The end result of this is that many tenants—because they do not want to lose the time or because they fear the landlord or because there is a low vacancy rate in an area—will not file under this section.

Rent review officers I have talked to quietly, and whose names will not be mentioned, certainly give me the indication that they feel they catch perhaps one or two out of every 10 cases of illegal rent increases. They also indicate to me, while not for the record, that they would love to have the power to go after certain landlords such as the one I have mentioned in correspondence to you who operates a series of buildings just south of my riding. Every time a tenant

moves out, he makes a practice of upping the rent and then leaves it up to the poor sucker who comes in to try to find out what the previous rent was.

Surely we can strengthen section 132 to require a rent review officer to investigate and acquire receipts when there is not a rent review hearing. Often deterioration takes place after a rent review has taken place. Often the landlord goes to the hearing, he projects major improvements and may even present quotations to back up these improvements or repairs he is promising. Then he fails to deliver, and we have constant complaints of that. He may even use the quotations to ask for a major rent increase. The following year he simply asks for six per cent. The tenants do not question it out of relief that they are only going to get a six per cent increase, and nothing further happens. What is happening is that false promises are made by the landlord but there is never any follow-up by the rent review officer and no power to do that.

In section 51(1), which is not yet proclaimed but which is dealt with under another act, the tenant is not really protected. The minister and the committee will recall that section 51(1) says: "Where, on the application of the landlord, the commission determines that the landlord in good faith requires the possession of a rental unit for his own purposes . . ." and so forth.

The tenant is not protected, because a landlord can use this section to evict a tenant and, once the tenant is out of the way, not go through with the changes he has projected. More particularly, there is no penalty for such fraudulent activity on the part of the landlord. There is no requirement for a follow-up on the part of the residential tenancy commissioner.

Often the tenant moves out, relocates in a new area and will not take the trouble and unnecessary expense that are often involved in trying to find out what is going on and proceed against the landlord.

Similarly, section 52(11) deals with the whole problem of what happens when a landlord wants to renovate, making repairs or renovations so extensive as to require a building permit and vacant possession of the rental unit. I am told by some of the tenant associations and people who have called me that in downtown Toronto this is often used as a method of making large rent increases that would not be obtained in any other way.

Even where the renovations are substantial, one must ask if this section is not being used to dispossess poor people of their homes

and apartments in the downtown area. Surely there is a need for the landlord to add the costs of renovations to his expenses, but he should come before the residential tenancy commission and justify his new rent that is set as a result of these renovations. Often cosmetic renovations are used as a way of getting rid of the tenant and then illegal rent increases are imposed on the new tenants. In the case of substantial renovations, it is still used as a way of getting very large increases which are in no way related to their cost.

This very committee has dealt with the whole problem in the downtown area of shortages of housing, particularly for single people between the ages of 40 and 60. The white coating and renovation technique is being used as a way of getting substantial rent increases and, unfortunately, is having the effect that poor and even lower-middle-class people of modest means who happen to be single are having their homes and apartments taken from under them. Surely the minister has some obligation in connection with his colleague the Minister of Housing (Mr. Bennett) to look at this problem.

We have had examples of this. The most recent is that of Huron Street, where a large number of units are undergoing that process at the moment. It is at 160 Huron Street—40 to 50 units. If the minister will check the listings in the *Globe and Mail*, they are even advertising buildings as ideal for renovation. What that basically says is that they want to sell the building for a lot more money than they normally would be able to get for it. What they are promising is that the new landlord can evict the tenants who are there, renovate and charge large rents. That is the implication in those ads. The cost of renovation should certainly be taken into account in the new rent increases, but often, unfortunately, the cost of the renovation is in no way connected with the new rents.

There are a number of issues that I think have been raised by Metro Tenants Legal Services. Many of them have been dealt with in private member's bills I have introduced. Some of them are being dealt with in other private members' bills that are being drafted and will be introduced this week or next.

One of the issues is the composition of the commission. The composition governed by sections 71 and 76 of the act. Section 71 provides, "The commission shall be composed of such number of commissioners as the Lieutenant Governor in Council determines." Section 76 provides "The Lieutenant

Governor in Council shall appoint as appeal commissioners such number of commissioners as the Lieutenant Governor in Council determines."

11 a.m.

Most of the present hearing commissioners were formerly rent review officers under the repealed Residential Premises Rent Review Act. Metro Tenants Legal Services say that from their experience under the new act, the background and orientation of the commissioners result in an inability to understand the tenant's point of view properly. As far as we know, none claims experience in tenant advocacy or work in tenant associations or the tenant movement as a whole. It would be difficult to deny that competent people are appointed now, but by the same token I think we can argue that there are competent people who have had experience in the tenant movement.

It should be remembered that the two-person appeal panels under the Residential Premises Rent Review Act were composed of one member at large, supposedly objective, and one tenant representative. Further, under the Ontario Labour Relations Act, section 91(2) provides, "The board shall be composed of a chairman, one or more vice-chairmen and as many members, equal in number representative of employers and employees respectively, as the Lieutenant Governor in Council considers proper."

I am suggesting that a similar balanced composition under the Residential Tenancies Act would be a recognition of the opposing economic forces in the process of rent review, as was previously done under the rent review act and then the Ontario Labour Relations Act. I cannot believe that the minister is any less concerned than the Minister of Labour about not only justice but the appearance of justice. I cannot see why this is not being done at the appeal stage. It not only would be appropriate to a fair analysis of rent review problems, but would more adequately provide an appearance of fairness, which tenants now feel they are not getting.

I would also like to deal with another area the member for Kitchener has mentioned—the inspection of premises. Under section 108 it states, "The commissioner may, before or during a hearing, conduct any inquiry or inspection he considers necessary and question any person by phone or otherwise concerning the dispute." Section 109 allows the commissioner to use information obtained outside the hearing provided that he first informs the parties of the information and



gives them an opportunity to explain or refute it.

With regard to the inspection of the residential premises by a commissioner alone or with one party, an opportunity to refute or explain is of little value, particularly after the hearing is complete and the explanation could only be by way of a letter to the commission. The tenants' group have suggested that all parties be given notice of an inspection so that the commission will have the input from both sides. This would be done by a notice of hearing, which is sent by the commission to all parties, and they have recommended changes to that effect. I believe the minister might want to address himself to that.

Section 131 of the act also gives me some problems—at least we can deal with them under that section. The problem I refer to is that high interest rates are being used as justification for rent increases. There is no requirement that if the interest rates drop the landlord in any way has to come back before the rent review board. What we are seeing now is the phenomenon where at the time of new mortgages landlords are taking out mortgages of one year, one and a half years or two years, at fairly high interest rates, and using those for justification.

What plans does the minister have to deal with a drop in interest rates, as economists project? The landlord has used those high interest rates as a reason for increasing the rents substantially. When the interest rates drop, he says, "Oh boy, I'm home. I will accept six per cent." The tenants are relieved that after a couple of years of very high increases the landlord is now asking for only six per cent. They celebrate what they think is their new-found winnings, in that the landlord is not requiring more than the guidelines—and nothing happens.

Surely there should be a requirement that where a landlord has requested a large increase as a result of a new mortgage and where that mortgage is only for a very short time, there be a review of the rents at the end of that mortgage period. Then the rent should be lowered at that time if that is reasonable.

In section 126(4) there is no right of the tenant to demand that a landlord prove his expenses. That is at the discretion of the commissioner. For example, upon application, the rent review officer may simply say he accepts the landlord is a fair and just person and he would not pad his expenses. It seems to me that in an adversary system such as you have in this kind of tribunal,

and where the commissioner is performing what amounts to a quasi-judicial function, surely it is the right of the tenant, where it is reasonable, to demand that certain receipts be produced and the rent review officer require the landlord to produce them and the tenant have an opportunity to look at them.

I do not think it is reasonable for the landlord to be required to produce a receipt for every washer and every small item. But surely where there are strong suspicions, as has been the case in some buildings, and I could name certain ones if the minister so requests, it is reasonable to demand receipts for any item over \$100 and perhaps to have a limit on the number, amount or percentage of expenses the landlord can charge without receipts for miscellaneous small items.

Rationalization of rents: We have had a number of problems under that. Basically, we are talking about two types of people who are affected. One is the person who has been in the building for a long time. It can be argued that, perhaps indirectly, he is being subsidized by other tenants by having a lower rent. However, there are what I would call hardship cases, such as senior citizens who have been in the building for a long time. The present landlord, or even a previous landlord, may have deliberately kept the rent low because they were not costing him an awful lot of money. They were good tenants, they were quiet, they kept the premises well, and so forth. Suddenly, these people are faced with astronomical rent increases.

Rent review officers tell me, although any landlords I have spoken to in specific cases have done otherwise, that there have been buildings where this has been done in a one-year period. It seems to me reasonable that there should be considerable discretion in the case of certain individuals to take into account the fact they have been good tenants, and perhaps the phasing-in period for rationalization should be longer.

The other group that is affected is tenants who have fought for rent decreases under the old act. They are suddenly faced with major increases under the rationalization process.

I would also like to ask some specific questions on section 81 of the act. Perhaps the minister can refer to that. Under section 81(a) it says, "The commission shall perform the duties assigned to it by or under this act and shall administer this act and the regulations." I am wondering if the minister has a process whereby specific duties or regulations or policy decisions he is mak-



ing and is sending to the commission are available to everyone else, because there seems to be some ambiguity there.

**Hon. Mr. Drea:** There have not been any.

**Mr. Philip:** There have not been any. Okay. That helps to explain it then.

**Hon. Mr. Drea:** As I say, I do not reasonably see where there would be.

**Mr. Philip:** I would assume it is the minister's role to set policy, that there is some form in which he passes policy on to a different body.

11:10 a.m.

**Hon. Mr. Drea:** But the policy for rent review is very clear-cut. I think that section has to be taken in the context of the other sections of the Residential Tenancies Act that are now in limbo. When you get into home repairs, for instance, there would be policies, but rent review is a very strict program.

**Mr. Philip:** Okay. I suppose the minister's answers may be the same to some of the others but I would at least like to go through them. Under section 81(b) it says: "The commission shall periodically review this act and the regulations and recommend from time to time amendments or revisions thereof." Has the commission done this? Has it made these known to the minister? Is there any process by which members of the Legislature can at least obtain those recommendations so that we can discuss those with the minister if there are any?

**Hon. Mr. Drea:** I think it would be fair to say, Mr. Philip, until the Residential Tenancies Act, or at least the particular sections involved, emerges one way or the other, either in effect or ultra vires, there will not be any formalized review of the existing Residential Tenancies Act, which is basically rent review. That case begins on November 25 before the Supreme Court of Canada.

**Mr. Philip:** The minister has just answered another question I was going to ask. That is fine. Section 81(c) reads, "The commission shall advise and assist the public on all residential tenancy matters, including referral where appropriate to social services and public housing agencies."

Surely that is something that can be done now. The experience of tenants I have spoken to is that the only person they get to speak to when they go into some rent review offices is the receptionist. I question you as to what training the person on the front desk has in performing this kind of facilitator role. Often the kinds of things a tenant may

go to the commission with are not under the the commission's jurisdiction. Often they are going with what amounts to a need for a municipal health inspector or a bylaw enforcement officer and so forth.

Some years ago, when I was associated with Canada Manpower, we developed a motto in which we said the person at the front desk has to be the most skilled counsellor of all because that person's role is to decide very quickly what the problem is, under what heading it falls, and who can be of most assistance. Therefore, the person on the front desk has to be the very best person and not simply a receptionist or a typist who does typing part-time, and so forth.

Perhaps this is a different kind of case. Certainly, you are not dealing with some of the most complicated manpower problems that Canada Manpower is facing where you may be handling anything from job placement at a very elementary level to a need for psychological or family counselling. None the less, I would like to know what kind of training you are providing for people on the front desk.

Section 81(d) reads, "The commission shall take an active role in ensuring that landlords and tenants are aware of the benefits and obligations established by this act." I would like to know what the minister means by "active." What kind of budget do you have for this, and what are your plans in this regard? It seems fairly clear to me there are a number of landlords who do not understand the act. There are a number of politicians who do not understand it either. More particularly, there are a lot of tenants who do not understand what their rights are. I think ignorance on the part of the tenants often results in their being taken.

**Hon. Mr. Drea:** There are a lot of newspapers, too, that do not understand it. They constantly write that the limit for rent increases by provincial law is six per cent. I don't know why they do that after four years.

**Mr. Philip:** I have one last item I would like to ask the minister about which is kind of an intriguing one. I discussed it with Mr. Williams but I do not know whether he has had an opportunity to look at it. It is fascinating. I am sure Mr. Breithaupt and some of the other members of the committee will be interested in it.

This is the case of a building in Rexdale. I don't know what the answer is to it and I am hoping Mr. Williams may have had a chance to look at it and consult legal counsel on it. A landlord has the obligation to pro-

vide adequate heat in the living areas of an apartment. This fellow is doing that but, for whatever reason, he is not providing heat in the hallways. Under the bylaws of the borough, the inspector comes up and says, "Well, the landlord is meeting the requirements of the borough's bylaws; he is providing heat in the apartment."

The problem is, if you pay for a luxury building, you don't expect if you are walking down to the swimming pool to have to put on your fur coat and a hat; if you are going to the laundromat, you don't have to dress up and so forth; if your children are going down to get their bicycles or something out of the storage room downstairs, you don't have to dress them up as if they were going to the North Pole.

I have asked you people to look at it. It is something that was brought to my attention by the now-defeated candidate for mayor in Etobicoke.

**Mrs. Campbell:** Who was defeated?

**The Acting Chairman:** The candidate.

**Mrs. Campbell:** Oh, the candidate, I am sorry.

**Hon. Mr. Drea:** Since heating is under municipal health bylaws—and I don't dispute that situation going on—surely there is a simple remedy in the Etobicoke bylaw. It may be far more complex than that, I don't know, but the level of heat and the dates and so forth for many years have been municipally controlled. I don't really understand how it would be possible to heat each unit and not heat the corridors, but ingenuity knows no bounds. I would think if Etobicoke, which has to enforce it, is having difficulty enforcing it, whatever the problem is, it is covered by the bylaws. I am not suggesting the bylaws are perfect and I am not suggesting they are enforced, but it is a municipal health requirement. Maybe we can help them.

**Mr. Philip:** Any help you can give would certainly be appreciated and I am inclined to think you are right on this. I disagree in some ways with Mr. Kells who said he did not want to pass the buck, but the municipal mandate does not cover this and therefore it had to be dealt with by the province.

**Hon. Mr. Drea:** I presume there is no provision in the Etobicoke bylaw for a measurement in the corridors. The definition probably is "living units". Toronto does not seem to have the problem and the city of Toronto is a pioneer in the whole thing.

**Mrs. Campbell:** Toronto has a lot of other problems, but not that one.

**Mr. Philip:** Mr. Williams said he would respond to that. I don't expect he has an opportunity on this short notice, since I only gave it to him on Friday to have a look at.

**Mr. P. C. Williams:** We are looking into it, Mr. Philip, and right now we are trying to obtain a copy of the Etobicoke bylaw that relates to that area. If you wish, Mr. Hermant can go into the question generally of the kinds of things we will be looking for in the bylaw as compared to the actual situation. We will provide you with a legal opinion, but I should stress that it is not covered by our act.

**Mr. Philip:** I understand that and I appreciate it.

**The Acting Chairman:** We have approximately 50 minutes left. I have two people on my list, Mrs. Campbell and myself, so I think what we will do is allow a ministerial response in depth for Mr. Breithaupt and Mr. Philip, subject to saving 15 minutes or so for Mrs. Campbell and me at the end. Shall we get it all on the table? Mrs. Campbell, perhaps you would like to—

**Hon. Mr. Drea:** Mr. Chairman, there is a bit of a problem. The minister, obviously, is not going to answer a great number of these, but the commission will. The difficulty is that the chairman of the commission cannot be with us because he has to undergo some substantial dental work which was scheduled long before the events of last week—he has been waiting six months for it. Perhaps if he could reply to the specifics, then he would be free to keep his appointment, if that is all right with you.

11:20 a.m.

**The Acting Chairman:** Would the other members of the commission remain?

**Hon. Mr. Drea:** Oh yes, sure.

**Mrs. Campbell:** I would like to say what I have to say.

**Hon. Mr. Drea:** Would you like to say it now, then?

**The Acting Chairman:** Mrs. Campbell, go ahead; my questions can wait until later.

**Mrs. Campbell:** I really have two points: As a result of criticism of a commissioner, of which the minister has been made amply aware by me, the counsel for Metro tenants and by some tenants, I attended a hearing duly with proxy on a rent review matter pertaining to the Barbara Apartments and I was appalled. In the first place, the commissioner attempted on more than one occasion to explain the landlord's increases to the

tenants, which I didn't think had anything to do with his role.

Finally it came to the point where the tenants asked for an explanation of a certain item. The commissioner tried to explain it, but in the final analysis, the counsel for the apartment owner said they were terribly embarrassed; they had no explanation for it. They tried a couple on for size, but we were able to point out that this item they were talking about was already specifically covered in their items of expenditures.

They finally said that while they did not want an adjournment, they could not oppose it because obviously they were in error in not having an explanation couched in very general language for this fairly substantial item of expenditure. At that point, of course, we all asked for an adjournment.

The commissioner, as was his wont, and you have been told this before, was the only one who had to be convinced or satisfied and he was not prepared to grant an adjournment. In a court of law, a judge cannot interpret the evidence unless he has it. It should not be left to the commissioner to make the decision without the evidence being before him. However, that does not deter him at all.

I was about to get back to the minister on it, but felt that in all fairness to the system it was inappropriate for me to draw it to the minister's attention prior to the determination by the commissioner of that hearing. I have never been advised of a determination, and I tried strenuously to get in touch with others to see if they had been told, since it came up, as I recall and I could be wrong, in July.

I want to know what the minister is going to do to take away from the commissioner, or a commissioner, his apparent sense that it is his function, rather than the landlord's function, to explain the landlord's position to the tenants, and to inform a commissioner that if an adjournment proves to be necessary, as in this case it was concurred in by the counsel for the landlord, an adjournment ought to be granted to get the facts.

I am appalled at the way in which that matter was conducted. Because of my complete disgust, I formally withdrew from that hearing. It made no never mind, but in any event I could find no other way to put it.

Secondly, the minister must be aware of a problem I have in my riding, where, as the result of work being done by Hydro, there was an explosion. The people in a whole building—and in St. James Town a whole

building is not an insignificant number of people—were put out of their apartments. They had no elevator service, obviously, because the electricity was off. We have sick people in that building; we have people with freezers who lost all their food. They then got a notice that as of today the hydro would be off from nine o'clock this morning until 12 noon tomorrow, and there is no way those people, short of going to court, have any redress at all.

In England that is not the case. It should not be the case here, Mr. Minister, that these people are left in this position. I am not going into details because of time limits, but to me there certainly should be a provision, as far as the tenants are concerned, for stopping rent completely on such an occasion, and compensation should be made to them for their damages. It is in limbo at the moment. You cannot have literally hundreds of people without alternative accommodation. Some of them are cancer patients there because of the cancer hospital and they are outpatients. You should see what these people have been through and everybody is sitting back leaving the matter in limbo.

It is true there are some people looking at legal remedies; there is no question about that. But this has gone on for months and, as I say, this next action, as of today, has just pushed the panic button without any question. It seems to me the minister ought to review the legislation that is reflected in his ministry with the Attorney General (Mr. McMurtry) to ensure that there is some protection in these cases. The landlord likely would have a right over against either Hydro or those people who caused the problem. It is more questionable whether the tenants have that direct recourse. The first one is definitely a matter of rent review and I want some response to that kind of action on behalf of the commissioner under rent review.

**Hon. Mr. Drea:** First of all in response to Mr. Breithaupt, with regard to all the sections, and why they are not proclaimed, we could proclaim them, but the remedy or the enforcement lies within the questions being determined by the Supreme Court of Canada.

**Mr. Breithaupt:** What is the problem, then, with respect to the gap that would appear, since section 9 in the earlier act is repealed?

**Hon. Mr. Drea:** It was repealed by the Legislature and the Legislature did not envisage that in 1980 it would not be operational. Even though it is being argued be-



fore the courts on November 25th, there are a number of other provincial interventions and cases running simultaneously. I guess it is the week for ultra vires matters all across. At no time was it envisaged that the full act, of which this is a part—it might have been a self-contained part, but it was a part—would not be operational by the end of 1978.

**Mrs. Campbell:** Mr. Minister, there is a correction on that. If I may say so, I think both Mr. Renwick and I raised the question of ultra vires when we were dealing with the matter. We were assured by your adviser—

**Hon. Mr. Drea:** And one independent adviser.

**Mrs. Campbell:** Well, whatever—that there was no problem. We did not pursue it. We accepted it but there was a question raised. We did envisage this.

11:30 a.m.

**Hon. Mr. Drea:** At the beginning of the committee hearings that question was raised by the member for Riverdale (Mr. Renwick).

**Mrs. Campbell:** And by me.

**Hon. Mr. Drea:** And by you. The member for Riverdale specifically pointed out that a tenants' group—don't ask me which one—had retained or obtained a significant constitutional expert from the University of Toronto, a law professor. The records will show he was here. He was a professor from the University of Toronto. We had the hearings down in the basement of this building and he came forward with an opinion, not the government's opinion, that it was not ultra vires. On that same day two constitutional law specialists from the Ministry of the Attorney General rendered the view that in their opinion it was not ultra vires.

The stated case was put before the courts because, for a simple strategy, one tenants' group—I think it was Metro tenants' federation—in any event, one significant tenants' group had announced it intended to challenge it in the courts. A decision was made to put a stated question before the Court of Appeal because the government would pay the bill, allowing the people who wanted to appeal it the right to retain whatever counsel they wanted and not be deterred by the financial question. That case was originally scheduled, I believe, for late in August 1979. However, the solicitors could not make appearances and it was finally done in October, I believe, and I compliment the Chief Justice of the province because he did expedite the case.

**Mrs. Campbell:** It was the court that appointed Robinette, as I understand it.

**Hon. Mr. Drea:** That may be, but in any event Mr. Robinette's fee was paid by the government. It came down early in February 1980 with a rather significant decision, the bulk of which concerned the authority of provinces to deal with section 96 judges, in view of the fact one of the challenges during the time this was being decided was in British Columbia and the British Columbia legislation, on a formal appeal, I think, rather than a stated question, came down and said this was not ultra vires. Bear in mind too there was a hypothetical case before the Alberta appeal court which said it would be ultra vires.

The court rendered its decision and within the time frame the decision was made by the Ministry of the Attorney General to appeal it, but that was never envisioned. As a matter of fact, I can recall afternoons when there were questions from the member for St. George, the member for Riverdale and other members as to how fast it could be put in logistically, what were we looking at, 90 days, 180 days, for full commissioners and so forth. It is in limbo by the courts.

The question has been raised here, why are all the commissioners under the act rent review people? It is because the only functioning part of the Residential Tenancies Act is the rent review. The landlord and tenant jurisdiction with the new act, for practical purposes of suspension, is being handled by the Attorney General. It is his jurisdiction and responsibility.

On all of these things we could proclaim but there was no authority to enforce. There was no remedy. For instance, you raised the question about the landlord not posting the rent schedule. Suppose we proclaimed it and said, "You must," and he didn't. Where do we go to enforce it? We are back in exactly the same situation we were in with the present Landlord and Tenant Act which does not have any remedies. The remedies are in the courts and this was the reason there was a need for a new tenants act because while the courts were fair and impartial in their determinations, the difficulty for both landlords and tenants was in the time needed to get before the courts.

On the question of government-owned structures, that was in the original rent review statutes back in 1975, I think, or maybe 1976. Everything was included—I believe that was the original act—everything. I do not want to get into a quarrel about it, so we will say the majority of the Legislature in the opening session in 1976 put in those exemptions for publicly owned buildings.



**Mrs. Campbell:** Within the rent, the rent-geared-to-income—

**Hon. Mr. Drea:** Throughout all of the hearings of the standing committee on administration of justice, which extended from October or November 1978 into June 1979, at various times, both in presentations and finally on the clause by clause, those matters were addressed and a majority of the committee decided to keep those exemptions. When it went to the Legislature those matters were raised on third reading, if I am correct, and the majority at that time in the Legislature on third reading decided to keep the exemptions for—I guess the best word is publicly owned—taking in Canada Mortgage and Housing Corporation, Metro housing, geared-to-income housing and all its variations. I think there was more significant discussion over the co-op housing and how to deal with nonprofit co-operative housing during those hearings than there really was with the other question.

I think that takes care of some of the legislative—

**Mr. Chairman:** I just wanted a supplementary on the constitutionality question. The government is picking up the tab, or what amounts to picking up the tab, for the tenants on the testing of the constitutional element. Yet, in an analogous situation, namely that of the Condominium Act, condominium owners have to pick up their own tabs. I am wondering why this ministry with two analogous types of cases seems to treat tenants as first-class citizens, but treats condominium owners, many of whom are in the same economic bracket, as second-class citizens because they have to come up with the funds to test their own cases.

**Hon. Mr. Drea:** I think that is an unfair criticism of this ministry. The decision on the constitutionality or the ultra vires concerns regarding enforcement and the section 96 judges were raised from day one with the Residential Tenancies Act. As I said, on the opening day of committee there were two significant legal presentations made, even though at the time those presentations were made people with direct responsibilities, such as the tenants' groups, served notice they intended to appeal.

Secondly, the appeal was not launched by the Minister of Consumer and Commercial Relations. The appeal was launched by the Ministry of the Attorney General. In the case of the condominiums, there was no concern about constitutionality when it went in and it went through.

**Mr. Chairman:** Oh, but—

**Hon. Mr. Drea:** Just a moment, please. You criticized me for not doing it and I am just telling you.

If people want to launch a constitutional question on the Condominium Act and certain sections of it, it is really the decision of the Ministry of the Attorney General as to whether that is a constitutional question they want addressed under a specific piece of legislation that directs it to the Court of Appeal. That is where the decision is made. It is not made by this ministry. That particular section on constitutionality is made by that ministry. So when you say that I treat people differently, that is not quite true.

11:40 a.m.

**Mr. Chairman:** If I used the words "Ministry of Consumer and Commercial Relations" I was referring to the government, not the particular ministry.

**Hon. Mr. Drea:** But if you want that question addressed to the Attorney General I would be very glad to address it to him and to report back.

**Mr. Chairman:** I appreciate your help, but I have already addressed it to him. I believe Hansard will show I was unsuccessful in persuading him.

**Hon. Mr. Drea:** I will draw his attention to the remarks made here, as well as the question, I believe, by the member for St. George for address by the Attorney General.

**Mr. Chairman:** I believe the record will show that at the second reading of the condominium bill, I did address the problem of the constitutionality of that section. So it was raised at the very beginning and later, of course, researched by Mr. Milman at the University of Toronto and by Mr. Robinette, which seems to indicate there was some substance to the early arguments which the minister and his adviser simply sloughed off when I made them at the second reading of the bill.

**Hon. Mr. Drea:** I was not minister at second reading of the bill.

**Mr. Chairman:** I understand that.

**Hon. Mr. Drea:** But Hansard will not.

**Mr. Breithaupt:** There was one other particular theme I did want to have resolved while all the representatives of the commission were here. That is the matter of the rental market survey. Was the information in that survey such that the number of units which had undergone rent review would have been known, and if that information is

available, why has it not been published as yet?

**Mr. P. C. Williams:** The information contained in the Ministry of Housing rental survey, first of all, was known to us. Second, I am not aware of each question asked by the survey firm which conducts the survey for the Ministry of Housing. My general understanding is that they review the questionnaire each year and it is possible, therefore, they revise it.

If I am not mistaken, we had a telephone call about a day before we came here originally—in fact, it was the very day we came here for our estimates hearing last Thursday—from a Mr. Zizys of the Liberal research office asking those same questions. I believe we have undertaken to obtain a copy of that questionnaire and to provide it to your office. I am not aware of the nature of the questions.

However, with regard to—

**Mrs. Campbell:** Could you give us a time when that would be provided? Around here you have to put the dates on things. You cannot rely on any commitment.

**Mr. P. C. Williams:** I do not think there is any particular difficulty in getting it for you.

**Mrs. Campbell:** By what time? This week?

**Mr. P. C. Williams:** This being Wednesday it may be difficult for me to have it by Friday, but I would suggest within a week.

**Hon. Mr. Drea:** We will get it to the committee by next week.

**Mr. Breithaupt:** Perhaps you could give Mrs. Campbell the results of that answer.

**Hon. Mr. Drea:** Mr. Breithaupt, we will give it to the committee next week.

**Mrs. Campbell:** We want it as soon as it is convenient.

**Hon. Mr. Drea:** We will give it to the committee and then it can—

**Mr. Breithaupt:** I think it would be best if it was given to the committee, yes.

**Hon. Mr. Drea:** Mr. Williams was asked about deterioration. These were all specific matters addressed to him. Do you want to talk about the deterioration question, Mr. Breithaupt, about setting the rents and also about this question of substantial renovation, turning a dwelling into new units?

**Mr. P. C. Williams:** I hope the committee does not mind if I call on additional staff who are working at this table to provide additional information, because I tend to specialize. On my immediate left is Mr.

Aaron Hermant, senior legal counsel to the commission. To his left is Mr. Gerry Gross, who is secretary to the board and registrar of appeals. By qualifications he is also a counsel. To my immediate right is Mr. P. Chadha, manager of our technical services section.

The question of renovation is a very thorny one. We have been giving it some consideration recently and I am aware that the industry as a whole is concerned about the problem as well. As an example, the industry is critical of the Residential Tenancy Commission in that a landlord or developer—let us put it another way, an owner—could spend a very substantial amount of money on renovations of a particular building. Then he may not know until after a tenant has complained that whereas he set a market rent himself, the tenant complained, a hearing was scheduled, we conducted the hearing and determined that in fact the renovations were not so substantial as to exempt it or to allow the landlord to set a market rent.

There are very substantial amounts of money involved and the feeling of the industry is that an owner should be able to come to the Residential Tenancy Commission with a proposal prior to any renovations being undertaken, lay out a plan before us, and get an answer in advance of conducting those renovations to determine whether he can set a market rent or whether the ordinary rules of rent review apply and he must just treat the renovations as capital improvements and amortize them over the life of the particular improvements.

There are substantial sums of money involved here from a landlord's point of view. In fact, we have had several situations where a landlord has spent literally hundreds of thousands of dollars renovating units and he comes to the Residential Tenancy Commission after a complaint by a tenant, and our commissioners have determined that the renovations were not so substantial as to create a new unit and have treated the costs simply as capital improvements, disallowing a significant number of the costs and reducing rents very considerably.

**Mr. Chairman:** It is left to the new tenant though, to ask that the landlord be forced to appear before the commission.

**Mr. P. C. Williams:** Presumably the building is vacant and once it becomes rehabilitated he starts to rent it out at a market rent. We have had quite a number of instances where new tenants will come in and pay the asking rent, and then determine that the building was under rent review previously.

They will make inquiries of our office to determine what the legal rent should be and we go back into our files and determine whether there was an order and what the date of the order was. Then we compute from there whatever the guideline increases were for successive periods and compare those to the actual rent being paid. In quite a number of cases, the "legal rent" should be considerably less than the market rent. We order a hearing in that particular situation.

**Mr. Chairman:** Is that not done in the research, perhaps going through municipal records and so forth to calculate? You say a large number of these have appeared before you. I would like to know if you have any idea what percentage actually ends up before you as a result of the new tenant appealing. My suspicion is that for every one that comes before you there are probably nine or 10 out there that go through. They are simply ways of raising rents.

11:50 a.m.

**Mr. P. C. Williams:** Mr. Philip, I could not argue against your particular point of view. I feel there probably are a significant number of cases where matters have not come to us and perhaps should. On the other hand the commission as a whole is very concerned and I was sent a gratuitous copy of a letter recently, initiated by the Housing and Urban Development Association of Canada to the Minister of Housing (Mr. Bennett). It was not in a brown envelope, it was quite proper that I got a copy, but that is exactly what they are recommending, that changes be made to the Residential Tenancies Act in order to allow the commission to prejudge a situation.

Presumably a landlord would file a set of plans and the theory would be that the commission would give a conditional agreement that, yes, if these plans are carried out and the renovations are so substantial, et cetera, and then if an inspection is done once the renovations are completed, the commission would give a final order. That is the kind of theory that is being talked about within the industry.

**Hon. Mr. Drea:** I certainly would want to talk very diligently with not only the Minister of Housing but particularly the administration or proper departments in the city of Toronto, because let us face some pretty blunt facts: when I was the Minister of Correctional Services there were some addresses that invariably were last knowns. I suppose that they were virtually flop houses or residences of very low calibre. They have been

converted. They are now \$250,000. All you have to do is drive on Jarvis Street or any of the side streets to see them. As fast as the dust is coming off of the bricks—I do not know how many of them—they are being rented. Many of them are being sold. Many of them are being rented commercially. I am not the only one who says this, but this is putting a very substantial load on people of modest means who used to be able to find accommodation, particularly the type of person you mentioned, single, by age, and those Mrs. Campbell has mentioned.

It is not something that can be tied to rent review. I would not want to get into any situation where rent review was being used as a method to facilitate very expensive accommodation downtown. That is something that really might be nice in theory but I would certainly think the Minister of Housing would have some profound things to say, as would the city of Toronto.

**Mr. Breithaupt:** Is there to be some guideline on this renovation concern?

**Mr. P. C. Williams:** Yes. We have already issued one guideline dealing with this. Mr. Hermant can go into that along with the rationale. I am very sorry, I would like to apologize to the committee, but may I have your permission to leave?

**Mr. Chairman:** We recognize that where you are going is going to be even more painful than what you have just been through and as someone who has had a certain amount of oral surgery myself, I wish you good luck.

**Mr. P. C. Williams:** I very much regret not being able to be here, because it is extremely worthwhile to have a thorough review of all of your policies and rules. I will read Hansard with great diligence.

**Mr. Chairman:** Thank you, Mr. Williams.

**Mr. Breithaupt:** Perhaps Mr. Williams could give us a copy of that guideline at his convenience so as not to use up the other time that members would wish to use to ask questions.

**Hon. Mr. Drea:** When Mr. Williams reads the rough Hansard he will file any documents that he feels will be of help to the committee, in addition to those asked for.

**Mrs. Campbell:** I would just like to say that I am supposed to be at the Good Neighbours' Club and I can verify what the minister has said about the needs of people in my riding and the way in which some of these renovations are driving single—

**Hon. Mr. Drea:** I helped get them that place. Mrs. Campbell, you recall the very stormy debate.



Mrs. Campbell: I recall working at the municipal level on that one. But I do know that these people are being squeezed out of places in the downtown areas.

Hon. Mr. Drea: In my time, it used to be high rent even in the ones that were literally converted into little more than boarding houses, 10 foot by 12 foot rooms.

Now, with all of the changes downtown, there is no new building. This is all on existing physical stock.

Mrs. Campbell: What do you mean no new buildings?

Hon. Mr. Drea: I am talking about existing physical stock. Even the opportunity to have a room has been removed because there is no room for small accommodation.

Mr. Chairman: I must call the vote in about 14 minutes, so I wonder if the minister can carry on and then I believe Mr. Davison has a very brief question.

Hon. Mr. Drea: Very briefly, to Mrs. Campbell: On the particular matter of the case you referred to, I will get a complete report on it and table it with the committee. I do not think there is any way there can be a blanket rule concerning adjournments other than adjournments where necessary. If the facts you put forward are that both sides requested an adjournment—

Mrs. Campbell: No, I did not say that. I said one side requested and the counsel for the landlord said they did not want it, but they were so embarrassed that they would have to agree to it. They did not request it.

Hon. Mr. Drea: I am sorry, I thought when you talked about the counsel you said they had.

Mrs. Campbell: They concurred that they were in error and they could not disagree.

Hon. Mr. Drea: We will look into that, but I am just putting it aside for the moment. Even if we had 12 hours today, I would still have to go out and get the details for you. That will come back through the committee.

I think I have answered just about everything other than the question about the interest rate. The difficulty with the interest rates on deposits is that, with everything in abeyance, the part it was under at nine per cent, was the Residential Tenancy Commission. It is really under the Landlord and Tenant Act. It is not my jurisdiction. However, last year when interest rates soared there was some concern, but then interest rates dropped. Interest rates, regardless of the experts, were supposed to be low this year. They are not low, they are rising.

I am going to consult with the Attorney General to see if there is a speedy vehicle by which we could rectify that which is in abeyance. Without being a financial expert, just as a mortgage holder, interest rates are back up.

Mr. Chairman: Would it not make sense to tie the prime interest rate on a yearly basis—

Hon. Mr. Drea: What we wanted to do, Mr. Chairman, was to leave it by regulation. The only argument at that time was about the amount but everybody on the committee wanted it in the legislation. Nobody foresaw the economic circumstances of the last two years. I would think now the Ministry of the Attorney General could reasonably bring forward a proposal to tie it into a procedure somewhat the same as the Province of Ontario Savings Office.

Mr. M. N. Davison: It may have just slipped the minister's mind, but he will recall that my colleague suggested tying it to a floating rate something like Canada Savings Bond rates.

Hon. Mr. Drea: Canada Savings Bonds are seldom a floating rate.

Mr. M. N. Davison: You suggest that as an alternative.

Hon. Mr. Drea: Yes. I am just giving the historical circumstances but I think today, knowing what we know, it is not going to be topsy-turvy one way or the other. There has to be the ability to set a proper rate. I do not think that can be a set figure in legislation because they traditionally rise during the Legislature's off season.

Mr. Breithaupt: I would certainly tend to agree with you on that, Mr. Minister.

Hon. Mr. Drea: The other problem is to make them flexible. You cannot change them every day like the bank rate because nobody would know what is going on. I think, Mr. Davison, in light of the things which have developed, a floating or pegged rate rather than a fixed rate is the proper method.

Mrs. Campbell: Mr. Minister, if I may, on the question of that case I gave you, it was not just the adjournment. To what extent should a commissioner be intruding himself in trying to assist the landlord with these items of expense? It seems to me that is not his function. If they cannot explain it then he should not be trying to.

12 noon

Hon. Mr. Drea: The problem of the roll-back in rent—and this was raised by Mr. Philip—is if somebody does not do the work



he is supposed to do or there is an illegal rent increase, the tenant is entitled to challenge—even if there is even a one half of one per cent increase. I am not disputing what you say—that at six per cent tenants are quite comfortable and feel there is room for action. On the other hand, where a landlord has not done work, very clearly even at one per cent they should be back to say that he has not, because it would result in a rollback.

I think we also have to look at the practical end. If the landlord says he is going to do the following renovations, does not do them and then does not come back for any rent increase at all—because if he comes back all the things he was supposed to do will be looked at by the commission and he is in serious difficulty.

**Mrs. Campbell:** They are not and you know it.

**Hon. Mr. Drea:** Mrs. Campbell, I beg to disagree. I went to a hearing the other night because it concerned a very difficult situation in my riding. The commissioner did not know I was there. Nine tenths of the problem there dealt with the inability of the borough of Scarborough to carry out a work order. It also involved some difficulties over a sale and a lot of things with the Canada Mortgage and Housing Corporation.

I listened very patiently for more than two hours and that commissioner explained and explained. He even went into heating and energy and all kinds of things.

The question was raised that this landlord had promised publicly to do renovations. He even submitted forms and vouchers for paint, et cetera. I had to leave there early to come back to the House but before I left and on the basis of very formal stands by various tenants that nothing was done, the application for 11 per cent was down to eight and seven and still dropping.

That commissioner had no way of knowing the minister was there because in the physical circumstances of the hearing, in a school room, the minister was in a place where he could not be observed.

**Mrs. Campbell:** You were given specific instances on that St. George Street property which has had I do not know how many hearings. They have allowed more renovations than there are apartments in the building and they have allowed for all sorts of things which were not done. They have gone on allowing them every year and they still have not been done.

**Mr. Chairman:** Surely what we have, Mr. Minister, is a central theme running through

this. We have four or five instances that are dealt with under different parts of the act: illegal rent increases caused by the landlord raising the rent when a tenant moves out and it has to be the new tenant who takes the onus; illegal rent increases or even legal rent increases caused by renovation; rent increases justified by high mortgage rates on short-term mortgages and the mortgage, in fact, may—

**Hon. Mr. Drea:** May I just comment on that for a moment? If a person takes out a mortgage and he is paying that mortgage over two or three years at a fixed rate, obviously rent review has to take that into account.

**Mr. Chairman:** Nobody has suggested they should not. What I am saying is that the basic problem is that there is no follow-up by the ministry to see what happens after these various ways of getting rent—

**Hon. Mr. Drea:** Those mortgages are for fixed periods of time.

**Mrs. Campbell:** You do not even make them produce their mortgages.

**Hon. Mr. Drea:** Not unless they are calling for financial hardship. If they are not calling for financial hardship and they are not asking for more money, what is the point of disclosing what the interest rate is?

**Mrs. Campbell:** Because he is claiming it and the tenants cannot get any details on the mortgages.

**Hon. Mr. Drea:** Mrs. Campbell, I watched that the other night. Somebody said the man was making 25 per cent. They brought out his mortgage interest payments which were 12 per cent. They are going to be higher.

**Mr. M. N. Davison:** I have two questions. I would like to know under what conceivable circumstances a commissioner would not allow an adjournment of a rent review hearing for a tenant to seek legal counsel?

**Mr. Hermant:** My answer to that, Mr. Chairman, is that I cannot conceive of any circumstances where an adjournment would not be allowed for that reason.

**Mr. M. N. Davison:** So if I submit one to you you will see that something is done about the commissioner who refused to allow an adjournment?

**Mr. Hermant:** I do not know what can be done after the fact at this stage of the game.

**Mr. M. N. Davison:** I would be quite happy if the fellow would just simply lose his job.

**Mr. Hermant:** Will you put it through to me?

**Mr. M. N. Davison:** I certainly will.

The second question I have is, can you explain to me why the Residential Tenancy Commission has had so much more trouble and so many more problems establishing itself in Hamilton than it has in other regions of the province?

**Mr. Hermant:** I do not know if there is any more difficulty in Hamilton than in any other region. I do know the Hamilton area has been the subject of a good deal of publicity in the newspapers in recent weeks because of one property management company, I believe, that is in the process of bringing to rent review some 55 buildings that it manages. Of course, there is a very active tenants' organization developing as a result. It has resulted in a considerable amount of increase in publicity, but I do not think it represents any unusual degree of problems.

**Mr. M. N. Davison:** Do you mean to say that the problems we have seen with the Residential Tenancy Commission in the Hamilton area are representative of the problems we have everywhere else in the province?

**Mr. Hermant:** If you could outline any particular problems I would be pleased to be more specific.

**Mr. M. N. Davison:** It is very difficult to do it in two minutes.

**Mr. Hermant:** I would be pleased to discuss it with you afterwards if you wish.

**Mr. M. N. Davison:** I think we will have the opportunity to discuss it. I am rather shocked that you would take the position that we have not had any more serious problems with the commission's work in Hamilton than we have in other areas. I thought you would have at least been frank enough to admit that—

**Mr. Hermant:** I am not aware of any particular problems that were unusual in Hamilton.

**Hon. Mr. Drea:** If you would file them you will get a complete report back to the committee and then you can make your judgements accordingly.

**Mr. M. N. Davison:** I think the minister and I will have a chance to discuss this further at another time.

**Ms. Bryden:** Mr. Chairman, I am sorry I was not able to be here earlier. I just wondered if the question had been asked as to whether the interest rate on the deposits could be raised.

**Mr. Chairman:** Yes, it was.

**Ms. Bryden:** Also, when there is dispute about whether the deposit was made as a

deposit or as a last month's rent there could be provisions of the Residential Tenancy Commission made available to them as a mediator.

**Hon. Mr. Drea:** I do not think there could be any argument that any money that is put down is the last month's rent. Mr. Wishart abolished the right of security deposit in 1970 when he was the Attorney General.

**Ms. Bryden:** Yes, but in Main Square some people put down \$100 before that was abolished. They are now being asked to upgrade it to the last month's rent.

**Hon. Mr. Drea:** As a security deposit or the last month's rent?

**Ms. Bryden:** It was put down as a security deposit because it bore no relation to the rent. They are now being asked to upgrade it to the last month's rent. Can we say that should not be allowed?

**Hon. Mr. Drea:** We will look into that and report back to the committee.

**Ms. Bryden:** Okay. Thank you.

**Mr. Chairman:** The minister still has not answered the question of what his policy is in terms of giving the commission more powers to deal with these problems. It is very clear now that the way the act is the onus is on the aggrieved tenant. Often these tenants are afraid of the landlord, or as is the case in my riding where we have students, they say if they go after the landlord, even though it is illegal for them to charge eight months' rent in advance or illegal to raise the rent, because there is a housing shortage for students they are going to have to pay it and keep their mouths shut because this big landlord is going to have them on the hit list and they will not get an apartment next year when they come back to Humber College. Unless the minister deals with that question then I say he is neglecting his responsibility.

12:10 p.m.

**Hon. Mr. Drea:** I suggest to you I have already dealt with it, except there has not been much listening. First, if the full RTC legislation was in effect that problem would not be there. You are now asking me to do legislation. These are not policy matters the commission is carrying out. They are what is in the legislation. If the courts rule in favour of the RTC bill, the problem disappears. If they rule against it then, yes, we will virtually have to take a look at the fragment of that whole act now in operation and put it into its full context, because this act, or the section of it that is operating, while self-contained, was for some technical reasons never

intended to operate with the existing or old-fashioned Landlord and Tenant Act. This is the problem.

If you are telling me I should do legislation now, I tell you I cannot unless the court rules before the end of this session. I am not in a position to tell the Supreme Court how to hear cases or when to bring in results.

**Mrs. Campbell:** I would not try if I were you.

**Hon. Mr. Drea:** I say this in fairness: It has been brought to the attention of the scheduling people for the Supreme Court of Canada by a number of provinces that this is an urgent matter. Obviously, it has priority even beyond November 25, so I thought I did answer the question. It is not a policy directed by the minister. You have to go into the House and change legislation. I think there would be a serious objection by a number of people in the Legislature, that if one has a case before the courts in limbo, one should get one's decision.

**Mrs. Campbell:** I do not know if it is the same position we were in under the children's package. That law has been introduced and they know it is before the Supreme Court.

**Hon. Mr. Drea:** That is not mine.

**Mrs. Campbell:** No.

**Mr. Chairman:** I am afraid that, even though we could carry on for another two, five or 10 hours on this one vote, as chairman I have the responsibility, when the time comes, to call the vote.

**Mrs. Campbell:** Could I just ask one question on the question I asked the other week? The minister did say he would consult with the Attorney General on the powers of sale. Have you not been able to find them any more than I have?

**Hon. Mr. Drea:** Mrs. Campbell, the Attorney General of this province and virtually his entire staff have been in British Columbia. I dispatched correspondence over there

immediately. I presume they are now back. As soon as I get the correspondence back I will table it to you, because it was not a committee thing. There is only so much I can do. I conveyed it to them as promptly as I could. The matter is over there.

**Mrs. Campbell:** I hope it will be of interest to all members of the House.

**Hon. Mr. Drea:** Then I will table it with the committee.

**Mr. Breithaupt:** I think just as long as we get it, it can be done in any particular way it can be attended to.

Vote 1508 agreed to.

**Hon. Mr. Drea:** Just before we finish, can I have one minute for myself? Just for about 30 seconds: I know this is of importance to a number of members of the House. It is the whole question of the Fort Erie racetrack. I think it is of some importance, because it emerged Friday last. Without going into all of the details, there is a significant question of the viability of the Fort Erie racetrack, as to whether it will operate next year. I accept that as a responsibility and I am optimistic. I stand by my public comments.

There was the question put to me by the Fort Erie Chamber of Commerce, which is also reflected in various things of both the town council and the region, which concerns offtrack betting. For a number of reasons it is somewhat incumbent upon me to say categorically that the government of Ontario considers enabling legislation by the federal government to introduce offtrack betting as a priority item.

**Mr. Chairman:** This completes the study of the estimates of the Ministry of Consumer and Commercial Relations.

Tomorrow we start on the estimates of the Solicitor General.

**Mrs. Campbell:** Is he going to be here?

**Mr. Chairman:** Yes, that is the latest word we have.

The committee adjourned at 12:15 p.m.

# ERRATUM

No.	Page	Column	Line	Should read:
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Philip, E.; Chairman (Etobicoke NDP)

**From the Ministry of Consumer and Commercial Relations:**

Hermant, A., Legal Counsel, Residential Tenancy Commission  
Williams, P. C., Director, Support Services, Residential Tenancy Commission









# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Solicitor General



**Fourth Session, 31st Parliament**  
Thursday, November 13, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THURSDAY, NOVEMBER 13, 1980

The committee met at 4:03 p.m. in committee room No. 1.

### ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

**Mr. Chairman:** I recognize a quorum. Today, we are dealing with the estimates of the Ministry of the Solicitor General. We have 15 hours scheduled for these estimates which means if you and I sit over the Christmas holidays we will finish them. But we can go ahead with as much of the estimates as possible.

**Mr. Minister,** opening remarks.

**Hon. Mr. McMurtry:** Mr. Chairman and distinguished colleagues, I stated to our colleagues on the justice committee almost a year ago that we could anticipate a very interesting, momentous and challenging year for the Ministry of the Solicitor General and in that respect I do not think we have been disappointed.

The new decade with all of its many and growing complexities brings, of course, special problems, new challenges for our police officers, firefighters and others involved in public safety. It goes without saying that we, in government, are confident they will continue to meet those challenges and we will continue to seek to assist them in every way that we can.

I should say as an aside, Mr. Chairman, that I may depart slightly from the statement I am reading. I made a number of changes last night and I have not, until this moment, had an opportunity of perusing the edited changes. So it may require a little more editing as I go along.

**Mr. Lawlor:** All for the better.

**Mr. Chairman:** If you make any mistakes I will be quick to correct you.

**Hon. Mr. McMurtry:** Thank you.

I want to state at the outset of these remarks that we are gratified and encouraged that independent polls, letters to the government and other public forums have demonstrated that the vast majority of citizens of Ontario continue to harbour great confidence

in our police forces, police officers, law enforcement officers and those who are burdened with the very special responsibilities in relation to public safety. It is a confidence which I believe is truly justified.

I, for one, do not believe that the job of policing has ever been more difficult than it is in the pluralistic and constantly changing society of today. The fact that the public continues to express such a high level of confidence in our law enforcement officers is a tribute to the dedication of the men and women who serve us so ably.

**Mr. Chairman,** we have budgeted in the ministry for \$191.7 million for the 1980-81 fiscal year. This is an increase of \$17.2 million or 9.9 per cent over the 1979-80 fiscal year. More than \$10 million of the increase is accounted for in salary and benefit awards and another \$1.6 million is directly attributable to inflationary increases.

As you know, the bulk of the funding for the Solicitor General's ministry goes towards maintaining the operations, management and support services of the Ontario Provincial Police. That amounts to more than \$165.8 million for this fiscal year. Committee members will continue to realize we do not possess a great deal of financial flexibility in this period of government restraint and it is quite clear that wage and salary benefits eat up most of our increased budget.

The Ontario Provincial Police continues to serve as the provincial police force in a highly distinguished fashion. The fact that they have been able to increase their productivity with the same complement over the past several years does great credit to all ranks of that force.

We realize, Mr. Chairman, that the OPP needs greater assistance if it is to remain an effective and viable force in the decade ahead. For this reason we are currently engaged in an intensive review of the operations of the OPP, in order to guide us as to the appropriate level of funding for the future.

At present there is an internal management group, consisting mainly of senior minis-

try personnel, OPP officers and representatives of the Management Board of Cabinet, which is conducting a survey to determine present and future OPP needs. We are hopeful and, indeed, optimistic that as the survey proceeds and the dialogue continues it will be of some assistance to the force as well in coping with many of the challenges of the 1980s.

One of the studies I commissioned during the past year, and one which is now being given careful consideration by the ministry and police forces across the province, is that completed by the task force on police hiring and training practices as they relate to minorities. I believe that the report, prepared by Dr. Reva Gerstein, Chief Gordon Torrance, of Hamilton-Wentworth police force, and Dr. Norma Bowen, of the University of Guelph, is going to be immensely useful as we continue to face the many challenges in that very complex area.

As members of the committee are aware, the report recommends a more aggressive and positive approach to the recruiting of minorities and a broader educational approach generally. I find it more than a little disappointing, however, even perhaps alarming, that in Metropolitan Toronto there has been no significant increase in applicants from minority groups despite the removal of height and weight restrictions. However, perhaps it is a little too early to assume that these changes are not going to produce beneficial, positive results in the long run.

**Mr. Chairman:** I have a friend who is trying to get in. Maybe I can send him over to you.

**Hon. Mr. McMurtry:** Perhaps more aggressive recruiting is a partial answer. Perhaps the leaders, the moderates in the visible minority communities also have a role to play in convincing qualified young men and women to pursue this challenging and rewarding career.

4:10 p.m.

I believe we would all agree, Mr. Chairman, that police forces which truly reflect the mosaic of our society in the Ontario of the 1980s can only be of benefit to the whole community. I would therefore welcome any suggestions from this committee which would help us to achieve that goal.

An area of particular interest to me, and one which is addressed in the Gerstein report, is that of educational opportunities for police as they cope with the complexities of the 1980s. Committee members know that Shaun MacGrath, the new chairman of the Ontario Police Commission, had particular responsibility for the Ontario Police College at

Aylmer when he was vice-chairman and therefore has a particular interest in this field. We can expect that the college will continue to adapt to the needs of the police forces of the province and I expect we shall see some interesting innovations from Mr. MacGrath, his colleagues and his staff over the next year.

I also note with pleasure that universities are beginning to develop specialized programs for the continuing education of police officers, most notably the University of Western Ontario and the University of Toronto.

When I met with the Ontario police chiefs at Aylmer earlier this year, I urged those chiefs with universities in their areas to encourage those types of initiatives. We, in turn, must encourage police commissions and senior police personnel to make it as attractive as possible for interested rank-and-file members of Ontario's police forces to pursue additional education. I believe significant strides can be made in many and diverse areas ranging from helping police officers to better understand the multicultural mosaic, to the increasingly complex methods used by white-collar criminals in the computer age, to mention but two examples.

Mr. Chairman, I would like now to turn to another area that is of continuing concern to me, to police officers around the province, and to all responsible citizens. That is the crucial matter of highway traffic safety.

I believe that one of the most important recent initiatives taken by our ministry has been the formation of the Ontario Traffic Safety Council. Under the chairmanship of Deputy Commissioner James Erskine of the Ontario Provincial Police, the council has played an important role in developing new initiatives and researching long-term solutions in the field of traffic safety.

The council was established in a year when 1,560 persons died and another 101,321 were injured in collisions on Ontario roads and highways. The introduction of seatbelt legislation and lower speed limits saved many lives in the past five years, but in 1979, the death toll began to mount again.

This council, composed mainly of senior police officers and civil servants with great experience in highway safety, has already made a series of recommendations, including, first, an amendment to our seatbelt legislation to cover children under five years of age and under 50 pounds. I am pleased to advise committee members that my colleague, the Minister of Transportation and Communications (Mr. Snow), hopes to intro-

duce such an amendment during the current session of the Legislature.

Second, the council has recommended the placing of photographs on drivers' licences in order to get suspended motorists off the highway. It is of great concern to me to hear the estimates, given by law enforcement officers, of the very large number of individuals who are operating vehicles on our highways while their licences are under suspension. It is expected that photographs on drivers' licences will assist police forces to enforce these suspensions because so many people, while driving under suspension, are simply using other drivers' licences, licences that may belong to friends or members of their family, or that are obtained under a fictitious name.

Third, the Ontario Traffic Safety Council recommends tougher penalties for drinking drivers and those who are convicted for driving under suspension. I have recently, once again, instructed our crown attorneys to press for stricter sentencing in these areas where the evidence justifies such an approach.

The council and the Ontario Police Commission have also been working with three regional police departments and the Hamilton Automobile Club on a pilot project to pinpoint the cause of the upsurge of fatalities in our urban areas. I hope to be able to make that report public before the end of the year.

My ministry has also accepted responsibility for implementing the recommendations of an interministerial committee and the select committee on highway safety, for improved crash rescue and extrication resources in Ontario.

Some of the members of the committee may have been aware of the demonstration at Queen's Park last month conducted by the Ontario fire marshal's personnel in relation to their new training vehicle. This vehicle is equipped with all the latest sophisticated equipment for freeing people trapped in vehicles involved in highway accidents. The vehicle is touring the province to train firefighters and Ontario police personnel in the latest rescue techniques. I am convinced we can save many lives and millions of dollars in hospital costs through this training program. We have also developed specialized training in this area at the Ontario Fire College in Gravenhurst.

I am certain that the members of this committee are well aware there is also another busy year for the office of the fire marshal.

Trained fire investigators conduct investigations basically into four classes of fires and explosions. Firstly, suspicious fires are investigated to determine whether they were the result of carelessness or design.

Secondly, fatal fires are investigated, often with the technical assistance provided by the professional engineers on the staff of the fire marshal's office. The results of the investigation, which usually include recommendations to prevent a recurrence, are presented to coroners' juries.

Thirdly, large fires—not involving loss of life—over \$500,000 are investigated as a matter of course to determine the cause, the major structural defects which may have influenced fire spread, the private fire prevention and protection deficiencies, human factors contributing to the loss and municipal fire department standards.

Fourthly, gaseous explosions are investigated to determine the cause and whether or not there is criminal negligence in the installation of the service or the misuse of the product.

Last year 1,940 fire investigations were conducted. In 1,720 of these there was a suspicion of a criminal offence being committed and after investigation the suspicions were confirmed in 1,320. Furthermore, 581 criminal charges were laid. It is of concern to the fire marshal that both the number of confirmed cases of arson and the total number of fires were higher last year than in the previous year. Happily, however, there is at least some ray of hope in these rather grim fire statistics and that is that the fire deaths last year were the lowest they have been in the past five years. Still, 215 individuals died and officials from the fire marshal's office will continue to dedicate their efforts towards reducing the death toll.

A word here about another valuable branch of the ministry, and that is the Centre of Forensic Sciences under its director, Douglas Lucas. It certainly and deservedly has become recognized by other jurisdictions as one of the finest in the world.

Work at the centre has proved to be the critical difference in many a difficult case facing police officers from all parts of this province. It is a fascinating operation and I urge any members of the committee who might not have done so to see the lab for themselves. I know Mr. Lucas and his staff will be very happy to co-operate and to conduct any tours that might be of interest.

4:20 p.m.



Members of the committee are also aware it has not been a particularly easy year for the coroners system. The last several years have provided a real trial by fire, as it were, for the coroner's jury system, and there is also no question that the increased public spotlight focused on many inquests has tended to create, sometimes, a circus-like atmosphere both inside and outside the courtroom. Furthermore, the length of many inquests has been greatly extended—in my view, unnecessarily so—in a manner that is not in the public interest, considering the cost to the taxpayer and what is actually produced in evidence as a result of these unduly prolonged hearings.

Nevertheless, despite these challenges, the centuries-old traditions of our coroner's jury system have stood up well and the results obtained have vindicated our faith in the good judgement of these panels of ordinary men and women in making recommendations that will help prevent future deaths. The fact is that roughly 70 per cent of all jury recommendations are implemented or find their way into legislation such as the Child Welfare Act and the Occupational Health and Safety Act.

Committee members will note that our budgetary increase includes \$575,000 in rate structure changes for coroners' investigations and inquests. I think it is fair to state we now have a realistic fee schedule for both investigations and inquests in the province.

The coroner's office continues to give a high priority, as well, to the donor program. I want to assure the committee we will continue to encourage efforts for donations of eyes, kidneys and other vital organs. Although we are still faced with a shortage, I am happy to report that donations continue to increase. Our chief coroner, Dr. Beatty Cotnam, has worked with the Ministry of Transportation and Communications to simplify the consent form on drivers' licences for the donation of these organs, and this initiative has proved highly successful.

The record should note, colleagues, that the distinguished chairman of this committee has just delivered to the Solicitor General a consent executed under the Human Tissue Gift Act. Thank you very much, Mr. Chairman.

**Mr. Kerrio:** The whole body?

**Mr. Chairman:** My whole body.

**Mr. Kerrio:** Now?

**Hon. Mr. McMurtry:** Committee members probably do not need to be reminded that a year ago at this time we were enmeshed in a

crisis of monumental proportions, the evacuation of Canada's ninth largest city, Mississauga. As one who saw at first hand the skill, professionalism and sheer good neighbourliness that manifested itself throughout that critical week, I am just as impressed now as I was then. Despite the efforts of some at the federal inquiry to denigrate the efforts of those involved in the decision-making process that week, I want to assure the members of the committee that we had the best advice available, that every decision was unanimous and that we took the course which was clearly in the best interests of the citizens of Mississauga.

In the wake of what has become known as the Mississauga miracle, the government has taken a number of initiatives, and I would like to bring the members up to date with respect to some of these.

First, the cabinet has considered and approved an offsite nuclear contingency plan for our nuclear facilities. Needless to say, that particular initiative was also encouraged by the understandable public interest and concern in relation to the events at Three Mile Island.

Our colleagues have received copies of the book, *Deraiment*, which outlines the roles played by various agencies and organizations in the emergency following the accident. This book is in response to requests from agencies across Canada and, indeed, around the world, for information pertaining to the evacuation and the demand for it has already been considerable.

In addition the Institute for Environmental Studies at the University of Toronto is engaged in a wide-ranging study of various aspects of the evacuation with a view to lessons to be learned from it. We will shortly be making public a preliminary report from the institute's researchers. Furthermore, next week the government and the Association of Municipalities of Ontario are sponsoring a conference on emergency preparedness for the 1980s. We have registered more than 700 delegates from at least eight different countries, but half of those are from our own municipalities around the province. We have devised a program we believe will prove useful to all those in attendance.

There are a number of other matters I look forward to discussing with the members as our estimates proceed. I welcome their suggestions as to how we may more effectively carry out the vital mandate of this ministry.



**Mr. Chairman:** Now we have the opening statement from the Liberal critic.

**Mr. Kerrio:** Thank you, Mr. Chairman. That is the good news.

**Hon. Mr. McMurtry:** You do not have any bad news for us, do you, Vince?

**Mr. Kerrio:** Yes, Mr. Minister. It is in an area you have left open because it relates to other matters. Of course we will avail ourselves of the minister's offer as we go through the votes.

Before I go to my notes I would like to raise a question that does not seem to be quite as important as it did a few months ago. I wonder if your ministry has conducted any polls that have not been made public. I will leave that as a question if you want to reply later.

**Hon. Mr. McMurtry:** I can answer it; I was asked the question not long ago as Attorney General. No polls were conducted during the five years I have had that responsibility, and to my knowledge there has been none in the Ministry of the Solicitor General either.

**Mr. Kerrio:** Thank you. You made reference to polls. I think that was to independent polls.

**Hon. Mr. McMurtry:** I referred to independent public polls.

**Mr. Kerrio:** One matter I would like to spend a fair amount of time on, and to which I trust the Solicitor General will equally devote a reasonable portion of his response, is the issue of funding of police forces in Ontario. This is not an easy topic to discuss in any forum, but I think committee hearings on ministry estimates are probably as good a place as any in the legislative process to attempt to thrash out the issues involved. Allow me to place my concerns in some context.

You will all recall the task force on policing in Ontario, whose report was issued more than six years ago. I would like to quote an important passage from that report:

"Policing is and will continue to be personnel intensive. Pressures for increased salary and better benefits will continue. Therefore the cost of policing will continue to escalate. In fact this cost escalation might outstrip both the municipalities' and the Ontario government's ability adequately to finance police expenditures. If so, major shifts may be forced in government spending priorities, or constraints will have to be imposed on policing expenditures. The latter could place pressure on Ontario policing that would pre-

clude the continuation of the level of service that Ontario currently enjoys.

"This potential crisis in police financing is one of the critical issues facing Ontario policing. This potential crisis is of concern to the task force. Ontario has enjoyed an excellent level of quality of policing. The imposition of economic constraints could inhibit the ability of Ontario municipal forces to maintain and improve the level and quality of services.

4:30 p.m.

"It is the conclusion of this task force that members of the police community in Ontario must anticipate the imposition of these constraints and plan to take action now and in the near future that will allow policing service levels to be maintained and improved."

The action the task force recommended could be best summarized in one phrase: Make the provision of police services more cost effective. The implications of this concept are considerable. The task force recommended more budgetary analysis and planning on the part of governing police authorities with the assistance of provincial authorities. The task force recommended the greater use of civilians on police forces in roles not requiring the use of law enforcement officers. Specifically I should mention recommendations that address themselves to this particular area:

"The Ministry of the Solicitor General encourage the Ministry of the Attorney General to obtain personnel to replace police officers as court clerks, prosecutors and attendants.

"Within three years no Ontario police officers be allowed to serve as court clerks, prosecutors or attendants."

The task force also recommended the establishment of a director of police research and information within the Ontario Police Commission to analyse new methods of policing, to consolidate and disseminate works on police reforms and so on.

With regard to provincial grants for policing, the task force strongly recommended that grants be tied to the needs of each police force. Further, it was recommended that free policing to communities by the Ontario Provincial Police be eliminated, and that each Ontario community be required to directly finance the cost of police services provided to that community, keeping in mind, of course, the provision of provincial grants. Also, where contract policing was provided to a community, it was recommended that the

contract reflect the full cost of providing these policing services.

The task force also made recommendations with regard to small-town forces. One recommendation of the task force was based on the conclusion that there existed significant thresholds of police service, given staffing requirements, community tax bases and so on, which would limit the ability of a community to provide its own police force.

The task force felt the minimum complement of staff should be 15 to 20, and the minimum population for the operation of such a force for southern Ontario to be 15,000. The task force recommended that such communities acquire contract policing, either with the OPP or neighbouring regional or municipal forces, or consolidation with neighbouring forces, particularly on a county basis. Somewhat similar recommendations were made for northern Ontario.

If I may summarize the report: It found great cause for concern in the area of police financing and made numerous recommendations towards making the delivery of police services more efficient and spreading the costs of policing more equitably.

What has happened over the six years since the report has been handed down? I should be fair, Mr. Minister, and give the good news first. This will not take long.

I should mention the activities of the Ontario Police Commission. I note in the estimates briefing book the activities of the advisers on police services. These advisers, it seems to me, are an important component in the movement to upgrade police work, police services and police administration. Given that there are only seven of them, I must compliment them on what seems to be a very broad range of activities.

I am also pleased to see that police forces across the province have been setting up research and planning branches in their departments. They should continue to be encouraged in this regard.

I am happy to see that, after almost 15 years, Metropolitan Toronto police are being replaced in the provincial courts by civilian security guards. It is incredible to believe that it took the provincial government so long to act on this outstanding grievance. I trust the minister will be moving quickly to implement the same changes throughout the province.

The Ontario Police Commission recently finished a study recommending the hiring of more civilians for the Niagara regional police force so that a substantial number of its officers can be freed from their desk jobs to

pursue real police work. That sort of trend I support.

There are other examples. I am sure the minister himself may wish to provide some. However, my basic conclusion is that not nearly enough has been done.

The task force argued that to alleviate the impending financial crunch for police forces in Ontario we needed to make police work more efficient and we needed to make the financing of policing services more equitable. The crunch is now upon us. The minister has allowed the inequities to continue and, further, he has not provided the police forces with the wherewithal to improve the delivery of their services.

What more damning indictment can be found than the two studies commissioned by your own ministry: The report of the special consultant, Emil Pukacz, completed on October 28, 1978, a report of very limited circulation and not easily obtained by the general public and the task force on police service delivery of the Ontario Provincial Police, completed in July 1980, a report which still is unavailable to the public? The first one is available in rather limited numbers.

**Hon. Mr. McMurtry:** Which was that?

**Mr. Kerrio:** The second one is the task force on police service delivery of the Ontario Provincial Police completed July 1980.

Before I review the findings of these reports, I want to highlight a single point. These studies reiterate, each in their own fields, the recommendations of the task force. It is not sufficient, it appears, for the ministry to be presented with an excellent study in 1974, reminded in 1978 and again in 1980. It is little surprise that these latter reports have received so little circulation. The ministry does not seem to like to be reminded of this administrative shortcoming.

Mr. Pukacz was appointed to study the court-related costs of policing. He made strong recommendations to the Solicitor General to relieve police forces from providing such services as transportation of prisoners, police prosecutors, security, court attendants and court clerks in provincial courts. It is astounding to think we put police through all sorts of training relating to law enforcement functions, pay them anywhere from \$20,000 to \$27,000 a year on the average, and then require many of them to perform duties that are, quite frankly, a waste of their training and a waste of our money.

It is in the area of the administration of the delivery of police forces that we sense

Mr. Pukacz to be genuinely surprised that changes have occurred so slowly.

With regard to small-town policing, Mr. Pukacz acknowledged that from the time of the task force report, 51 local municipal forces were absorbed into regional police forces. Keeping in mind the threshold level for police forces, Mr. Pukacz had the following to say:

"Irrespective of this progress, there are still in existence 13 municipal police departments (population 10,000 to 15,000) whose complement of police officers ranges from 13 at Sarnia township to 22 at Lindsay, with clerical assistance of two to seven. There are an additional 32 police departments (population 5,000 to 10,000) with a complement of police officers ranging from five in Mersea township to 17 in Tillsonburg, and clerical assistance of nil in six departments to eight in Tillsonburg. Finally, there are still 46 municipal police departments (population under 5,000) with a complement of one police officer each in three departments, two officers each in five departments, three officers each in eight departments, four officers each in 10 departments, with a maximum of a complement of nine police officers at the town of Prescott in southern Ontario and 12 police officers at Michipicoten township in northern Ontario. No clerical assistance has been provided in 28 departments; only one in 12 departments, with a maximum of six civilian staff at Petrolia, a town with a complement of only six police officers."

It is interesting that our briefing materials for these estimates show that of the total number of organized municipal police forces in the province on January 1, 1980, 59 or 46 per cent represent forces of nine members or less.

4:40 p.m.

I would like the minister to comment on the task force's recommendation in this regard; indeed, whether he does believe that small police force complements, regardless of how dedicated the individual officers are, may not be able to provide the same level of policing one might expect. What really astonished Mr. Pukacz were the serious inequities in the financing of police forces across the province.

In the area of provincial grants for policing, Mr. Pukacz could find no justification for the differential in the per-capita grant structure in this province whereby regional police forces receive \$15 per capita grants, and municipal, \$10 per capita. Following

the early start-up costs the regional forces may have experienced, there is no longer any justification for the discrepancy.

This is borne out when one examines what percentage of the police budget is subsidized by the province. In the case of regional police forces, in 1977 fully 34.47 per cent of their cost of policing was covered by the province.

Looking at major cities with nonregional forces, we see the equivalent percentage being 16.19 for Ottawa; 17.22 for Windsor; 21.64 for Peterborough; 18.43 for North Bay; 23.38 for Cornwall; and so on. Unfortunately, the situation has been getting worse. The provincial percentage share of policing costs for a city like Windsor has dropped from 17.2 per cent in 1977, to 16.7 per cent in 1978, to 15.2 per cent in 1979. Peel region has seen its subsidization drop from 33.9 to 32.1 in one year.

The reason for this is that the per capita grant has remained the same since 1977. Despite increasing per capita costs due to the need of greater service, never mind inflation, the province continues to pay at the same rate it has paid since 1977.

If the minister would wish to respond that the money simply is not there, I would have to ask him about the serious inequities as between communities in terms of their contributions to the cost of policing. A majority of municipalities contracting OPP services have been undercharged relative to what could be considered to be the fair cost of the service. Mr. Pukacz estimated the cost of this subsidy to be \$1.5 million. But this is peanuts compared to the rampant free policing given to numerous municipalities without any charge. Mr. Pukacz estimated the subsidy here to be \$56.8 million.

What is more galling is that some municipalities were receiving per-capita grants for portions of their population who nevertheless received their policing free. I wonder what kind of management we have there? More than two years after the task force recommendations, and still nothing has changed in this regard.

It is interesting to note, as an aside, that the deputy minister in his appearance before the public accounts committee this summer, acknowledged this problem which he estimated to amount to a \$52 million subsidy. Indeed, he admitted he found the situation embarrassing. After six years of inaction, I think this is putting the matter lightly.

It is also interesting to note the deputy minister's comments in that same committee



regarding the discrepancy between per capita grants as between regional and municipal police forces. Here is one sample of his observations: "I am seeking to have established a study of the reasons and justification for what appear to me to be obvious inequities. I have been given to understand that the study is starting, but I don't think anything has happened yet."

Unfortunately, there is just so much that the ministry has not been doing, it is difficult to try and comment at length on each topic. But let us continue with Mr. Pukacz's findings.

With regard to the use of civilians on police forces, Mr. Pukacz has this to say: "In times of critical cost escalation for policing, and with a view of realizing economies without diminishing the efficiency and effectiveness of the law enforcement and the prevention of crime, serious consideration should now be given to eliminate the use of police officers in the performance of tasks that can be done by civilian employees within the organization of the police force. These would include custodial and security services in courts and other public buildings, communications . . . dispatching, transportation, accounting, court liaison, stores and supplies, records management and all clerical functions, such as telephone operators, receptionists, complaint recorders, et cetera." Mr. Pukacz, ever so diplomatically, did not refer to the 1974 task force which recommended the very same things.

Mr. Pukacz had some interesting things to say about the administrative technology services section of the Ontario Police Commission. The briefing materials describe this section as an extension of the advisory services, providing a wide range of services, primarily directed at police administrative systems and procedures and their exploitation to achieve optimum cost-benefit results.

Mr. Pukacz enlightened us some more on the activities of this section: "The section, in close co-operation with the commission advisers on police services, has developed for all municipal police forces a records management program; budget and resources information system; criteria for workload analysis and patrol deployment studies; standard rules, regulations and procedures for municipal police force management and other guidelines, relating to a day-to-day operation of municipal police forces."

Such a function makes sense. It follows the philosophy of the task force, that improvements in police management and budgetary

analysis, through research and planning, should lead to more cost effectiveness on the part of police forces. Thanks to the nickel-and-diming of this provincial government, which cannot see short-term expenditures leading to long-term savings, the administrative technology services section had its budget slashed from \$65,000 in 1975-76 to \$15,000 in 1976-77, to remain at that level until it was finally raised to \$27,000 in 1980-81.

It is a cruel joke for the minister to play on the police forces in this province when in the light of impending financial crises for local forces, not only does he freeze provincial grants, not only does he fail to ensure that the OPP can assist those communities wishing to acquire OPP policing, but he also fails to eliminate financial inequities in the system and falls short of helping municipalities upgrade their own police forces.

Let us see how the minister has administered his own police force, the Ontario Provincial Police. Recently—in July 1980, to be precise—the Solicitor General received the report of the task force on police service delivery on the part of the OPP. The task force found, for starters, that the OPP is underfunded for the year 1980-81 to the tune of \$3.2 million.

The task force raised concerns with the large amount of overtime incurred by the short-staffed force, overtime amounting to roughly \$7 million, and felt this should be curtailed. In many instances, the task force recommended the use of civilians for non-law-enforcement activities. This is the third such recommendation since 1974.

Yet in 1976, the OPP had a complement of 4,045 uniformed personnel, and 1,161 civilians. In 1979, uniformed personnel numbered 4,006 and civilians, 1,173. In a force of over 5,000, the net change in personnel over four years has been a decrease of 39 uniformed officers and an increase of 12 civilians.

This effective freeze in hiring civilians means a continuing inefficient use of police officers for non-law-enforcement activities. The continuing freeze on hiring uniformed personnel means that municipalities, which have asked the OPP to undertake policing in their communities, cannot receive help. In December 1979, 19 communities had made such a request. As of October this year, fully 29 communities have made that same request.

The OPP task force recommended that contract policing should be offered on a full recoverable basis, as an option to all munic-



ipalities having police forces serving populations of less than 15,000.

4:50 p.m.

Does this sound familiar to anyone? It is only the third time in six years a recommendation of this sort has been made by a government study. I am sure the authors of these studies are getting as frustrated as members of boards of commissions of police, chiefs of police, municipal councillors, not to forget we members of the opposition in the Legislature, in the face of the inability of the ministry to undertake the changes necessary to meet the challenges besetting police forces in this province.

A matter that is still in the works and I do not imagine we can get into it to any degree, Mr. Minister, is the Tillsonburg police matter. Realizing the investigations are ongoing, I don't expect you, Mr. Minister, to comment on the substance of the allegations, only to the extent, if you could tell us, when the investigation might be completed. I would like to receive from the minister some comment concerning these allegations and when they were first brought to the attention of his ministry, and what was done about it.

No doubt the minister is aware of the newspaper articles in the Toronto Star of September 1980. It was reported that the former chief of police of Tillsonburg had submitted a report critical of the force to the Ontario Police Commission four years ago. Shaun MacGrath, an OPC member, is alleged to confirm this as well as to state, "Yes, we have been keeping an eye on Tillsonburg for some time."

In a Toronto Star story of September 30, 1980, the following was recorded. "He"—meaning you, Mr. Solicitor General—"confirmed a Star report brought to the attention of his press conference, which said the Ontario Police Commission had known of the problem within the Tillsonburg force since 1976."

**Hon. Mr. McMurtry:** I just have to interject there. I will certainly respond to it at a greater length, Mr. Kerrio, but if it will be of assistance to you, we have interviewed the former chief and the problem was an unrelated problem. It involved one of the same personnel, but it had nothing to do—

**Mr. Kerrio:** But it did not relate to this problem?

**Hon. Mr. McMurtry:** No. It was an allegation apparently dealing with the struggle between the police chief and one of the senior personnel, and the problems he was

having. But it had nothing to do with the allegations of brutality or improper conduct with respect to members of the public.

**Mr. Kerrio:** You can appreciate though, why the two matters appeared to be one. If that is the case, I am prepared to accept that as a reasonable explanation for these comments. Thank you very much then for that comment. I should not pursue that matter but maybe you might, in your response, bring that matter very clearly into focus. I should not go on and raise any more questions, because that changes the whole context.

**Hon. Mr. McMurtry:** Excuse me for interjecting, but just as a matter of interest, for a change of pace, there is good reason to believe the letter written by the former chief never actually reached the Ontario Police Commission. I will not trouble the committee with the rather Byzantine happenings we believe occurred; in other words, an interception of the letter. Be that as it may, because it has not been proven, the OPC has no record of any letter. We have reason to believe, although it cannot be proven, that the letter was probably intercepted.

But there is an internal struggle on the basis of who is running the police force, the former chief or one of the individuals who is still on the force. I gather the chief is looking to the police commission for some advice as to how to handle that sort of situation. But our information—and we have had the police chief interviewed as if there were no allegation at that time of any such allegations of brutality or other improper conduct relating to members of the public; I think we have an affidavit.

**Mr. Kerrio:** That is fine. I am prepared to accept that. It was just coincidental that it appeared we were talking about one and the same event. On that basis, Mr. Minister, I would ask you to bring it into focus and put on the record your understanding of it and separate the two incidents as not having to do with each other.

I would like your comments on a couple of other matters, given your role as the minister responsible for policing. One is the matter of countercharges by police when they themselves are charged by members of the public. Now this matter has been discussed before—

**Hon. Mr. McMurtry:** It is usually the other way around.

**Mr. Kerrio:** No, but this is in the context of an article that appeared in a Toronto

paper, and I would like you to respond to this specific case.

The suggestion was that Metro police, through their association, were counter-charging people if charges were made. I refer to an article in the Toronto Sun of November 6, 1980. The article reads in part: "Accusing a policeman of assault is four times as likely to trigger a devastating legal counterpunch this year than it was last. But police deny any intimidation is involved. Phil Givens, chairman of the police commission, denies police are trying to intimidate people who may have legitimate cases against police. 'It is a simple matter of economics,' he says. 'Over a period of years, it has cost taxpayers millions to defray legal costs of police fighting such charges. Knowledge that they may be hit with a lawsuit or a criminal charge will deter frivolous or vexatious charges by the public,' he believes. 'Civil suits are only launched on behalf of police who have been acquitted in courts of assault charges.'"

Meanwhile the following item was reported in the Globe and Mail, September 16: "A criminal lawyer has testified that two of four police officers charged with wounding and indecently assaulting a man they were investigating, threatened to lay charges against the complainant, his girl friend and his father, if the allegations against them were not withdrawn." I would just like you to react and see if that poses any kind of a problem, and what your view is on these allegations.

Secondly, there is another matter, as it relates to police, and I would like your reaction to this one.

**Hon. Mr. McMurtry:** What was the most recent one you were talking about? Was that the matter Mr. Warner was interested in in Scarborough, the Turner matter?

**Mr. Kerrio:** Yes.

**Hon. Mr. McMurtry:** That matter, as you know, was heard by a jury. The jury acquitted the police officers. But actually the crown has appealed the acquittal on the basis of the judge's charge and some of his rulings with respect to evidence. So I will not be able to comment about that.

**Mr. Kerrio:** No, that is fine. There is another one I would like your comments on, and it involves the—

**Mr. Chairman:** Would it be possible for you to have copies of those articles bylined for other members of the committee? The Sun article, does that have a byline? Is there an author to the article?

**Mr. Kerrio:** I will get those copies and put them before the committee, yes. I just have the report as it is taken out of that article. But I will get those for you and get the byline.

One other area I would like your comment on is political involvement. There has been some suggestion that the Metro police association did not become involved or did become involved in—I would like to ask the Solicitor General what your views are on the activities of such an association.

Finally, I would like to talk about an emotional subject—as I did in last year's estimates—and that is, Mr. Solicitor General, when will you introduce a bill setting up a civilian complaints procedure that will be acceptable to the majority of the members of the House?

Before you start to react—

5 p.m.

**Hon. Mr. McMurtry:** Before I peel myself off the ceiling.

**Mr. Kerrio:** —I would like to remind you that all three newspapers supported the defeat of this bill, unanimity that is rare for editorial boards of newspapers in this city. I would like to set aside the rhetoric and the twisting of the facts and finally ask you—

**Hon. Mr. McMurtry:** You mean, set aside their twisting of the facts.

**Mr. Kerrio:** Set them aside and ask you again, when are you going to bring in an appropriate bill on the issue of civilian complaints against the police?

**Hon. Mr. McMurtry:** I could answer that one very quickly right now by saying a very appropriate bill was introduced. It was totally irresponsible of the opposition parties not to allow this bill at least to get to committee. I have no intention of introducing any other legislation at this time. The uninformed comments of editorial boards are something we have to live with day by day. If we accepted all their advice, we would have a world totally in chaos.

**Mr. Kerrio:** I won't pursue that any further.

Just another small point: I would like to ask if you would table in this committee the report on the task force on police service delivery, on the Ontario Provincial Police. Can we have that report tabled or is it not ready?

**Hon. Mr. McMurtry:** On the Ontario Provincial Police?

**Mr. Kerrio:** Yes.

**Hon. Mr. McMurtry:** The report I think you are quoting from is the first volume of the report of a review of the Ontario Provin-

cial Police. I am quite prepared to share any of the contents of that report with you. I do not want to table it, on the basis that it is but the first volume, as it were, of an ongoing study.

I have to tell you there is considerable disagreement within the ranks of the Ontario Provincial Police on some of the conclusions in that report. Because it is an ongoing study, the next stage is a formal response from the Ontario Provincial Police.

I, in my turn, felt that the report, while very helpful and useful in many respects—indeed, in most respects—was incomplete and failed to deal adequately, in my view, with some aspects of police resources, or what might be anticipated to be adequate resources for maintaining an adequate level of service.

I would simply like to leave it there. I am quite prepared to share the contents of the report with any of the members, because really we have nothing to hide or to bury in relation to that report. However, if it was released as a public document, the impression would be that this is a complete report with respect to the Ontario Provincial Police, and I think that would be unfair to the force.

For example, the inference in the report is that the force is, perhaps, adequately funded in some areas where, quite frankly, I have great difficulty, personally, accepting those conclusions and the OPP has also. They may be based on facts that have not been established, such as, the level of service is adequate at the present time and therefore, assuming that the level is adequate now, what will be required in so far as resources for the future are concerned.

I have to tell you, to be very frank as I have tried to be in dealing with the issue in the Legislature and outside, I do not believe the service is adequate in all areas and I do not fault the OPP for that fact. I fault the lack of resources for inadequate level of service in some areas.

So there are number of points that are contentious. I say that in a healthy, positive way, because, quite frankly, we are trying to encourage a very positive, useful, frank dialogue between the various agencies of government responsible for the OPP, particularly the central agencies responsible for the funding.

I just want you to know my concerns and why I think it would be premature to table the first volume of a report when there is so much that has still to be debated. But I would

be quite happy to discuss with you the contents of the report.

**Mr. Hilton:** If I may, Mr. Chairman. In the day-to-day management of this ministry, I do not feel capable of understanding and knowing all the problems in the various parts of the ministry. It is necessary, then—or I perceive it to be necessary, and I may be in error—necessary and advisable for us within the ministry, to ask those who are associated with us in the ministry to assist me in travelling about and perceiving problems as best they can and answering questions in relation to the adequacies of this and that.

In this report, as the minister has said, it appears that they have started out with a perception—indeed, in the report they have stated the perception—that if the present level of service is adequate—they do not determine whether the present level of service is adequate or inadequate, but if it is adequate—certain administrative changes might be made according to the perception of those I ask to go and do it.

This is not only being done in relation to the police. I have asked other parts of the ministry to examine their own departments, using not only their own resources, but other resources of people with some knowledge. I do not know what they will come down with. But if these purely advisory documents, which are entered into to afford me advice I can share with my minister to better administer the force, are to be made matters of political consideration or comment in an extreme degree—of course, anything should be open to comment—and be perceived outside of what they really are, I would submit that would be unfortunate.

We hope to use all of the people in the ministry. In this case, all the people were from within the ministry with the exception of one person I asked Management Board of Cabinet to give us, because that person was outside the ministry, but acting at our request to assist in the interviewing and the analysis.

These are working documents to assist us to better manage that which we have in dollars, manpower resources, et cetera, in all parts of the ministry. It was my hope to have it go right through every part of the ministry and we started with the OPP.

**Mr. Kerrio:** It is important that we can examine them, because they relate directly to some of the questions I have raised with the minister and possibly the answers that are given to me on the subjects, are going to satisfy me on the questions I have raised.



I just have one more matter I will leave with you, because I think you have done something about it: the much discussed and debated high-speed chases. I think you have done some research on that and if you have anything to report, I would appreciate it. I am not sure that it is completed in any way, but I think you were going to do some research in that area and maybe come up with some suggestions as to how, in the old cliché, it not only is done but appears to be done in the safest way. I am not sure that has been done within your ministry but I hope it has.

5:10 p.m.

We will raise any other questions during the individual votes and I suppose you will respond after the other critic has raised his concerns. At this juncture, Mr. Minister, I am satisfied until you respond to some of my questions and concerns.

Mr. Chairman: Mr. Kerrio started at 4:25 p.m. and completed his opening remarks at 5:10 p.m.

Mr. Makarchuk: I am glad to take part in these discussions, having had brushes with police from Korea right around to the other side in Bulgaria. I have some experience from the other point of view on the policing in the world and in Canada and particularly in Ontario.

I am rather disappointed with the minister's smug, contented reply that we have everything under control and that our polls indicate everyone has confidence in the police. If someone asked me the same question, I would say, yes, I do have confidence in our police, but I think we have to recognize there are certain irritants in this society. A lot of people are not quite as confident in the police.

When you have people appearing at the front of the Legislature or appearing in front of city hall, they do not go there because they are told to by someone, or something like that. They generally go there because they have some deep-seated concerns about some of the policing in this province. Although they may have confidence, they also have concerns.

Your decision not to introduce a police review, a civilian review bill again, as you say, your sort of total, offhanded, absolute rejection of the idea, indicates that you are blinded; you have blinkers on in terms of looking at the policing in Ontario.

Policing is not only for, shall we say, the majority, policing also has to be provided for the minority. If a minority has concerns and

is trying to express those and you refuse to recognize them, then I think you are not doing your job properly. Policing is not for one part of the population while someone else gets: "Well, we give you what we think is right for you. Whether you have anything to say or not, it is irrelevant to us." It seems to me that is the attitude you adopt.

I feel you have to instill—and you could, you are in a position to instill—a great deal of confidence in the visible minorities and the ethnic communities about policing in Ontario. You could start by ensuring one of the steps would be that kind of civilian assessment of complaints against the police.

I think you have been reading the articles in the Star by Marilyn Dunlop, and I have them here, about the situation in Chicago where they have a board. You will notice that the police system has not fallen apart. The board seems to operate and everyone seems to be reasonably happy with the nature of that board in its dealings with complaints about police.

I resent the fact you use this, when we question these particular things. There was a statement by the Premier (Mr. Davis) to the chiefs of police to the effect that if we question this matter, somehow somebody is anti-police. In your own statement—and I am paraphrasing it—you said something to the effect that if we start questioning the police, somehow the police will be reluctant to go into areas which may perhaps be difficult or dangerous or something like that; in other words, that they would have on their cars, "To Serve and Protect," and then in brackets, "When Convenient."

I want to point out to you, Mr. Minister, that a policeman takes an oath. I want to remind you there have been thousands of Canadians who have taken oaths as servicemen and who went overseas. They did not question whether their task was difficult or dangerous. They went ahead and did the job because they felt an obligation. That kind of feeling should be there with the police. When you take an oath, you take a responsibility and you get paid for it. You do the job. I think the kind of statement by a Solicitor General such as you made is not showing good judgement.

I do not think we have to really mollycoddle the police, and I do not think the police really want to be mollycoddled. There are questions of morale. There are questions of various things. But these are the kinds of situations which I think, with proper administration, with more responsive boards, with



more rights for policemen, can be resolved. It is not an insurmountable problem; it is not an impossible problem.

I think you should also try to get away from some of the petty regulations policemen have to contend with. The moustache is an example of one of the silly things—a policeman being suspended because of a moustache. I hope that in this day and age anyone who wears a moustache is not considered an anarchist or something of that nature.

Why do you not extend to policemen some of those kinds of civil rights? Make them feel at least part of the community; do not try to isolate them as you do now. To a great extent the policeman is isolated. He feels powerless on many occasions because he is powerless with the boards and with the commission.

Then there is the matter of your commissions. This was also raised by Mr. Kerrio. You talk about Tillsonburg and other trouble spots in the province and each and every one of those operations is managed by a board of political commissioners, which is really what police commissioners are. You appoint people, and I can speak of my own city of Brantford, who really do not represent anyone in the community.

**Hon. Mr. McMurtry:** No. Right now it is done by the police committee in council.

**Mr. Makarchuk:** No. The mayor is one of them, but you have your appointees.

**Hon. Mr. McMurtry:** No, we do not appoint the mayor. I am just correcting you, Mr. Makarchuk. In Tillsonburg, the police force is administered by a local committee of council, all duly elected.

**Mr. Makarchuk:** All right. I will accept that. I thought that they had a police commission. But you do have police commissions and you appoint them. You should select people in the community who have some involvement in the community.

There are Tories, believe it or not, Mr. Minister, who actually are involved in the community and people have confidence in them. If they are appointed to the police commission, people will know who they are and what they do. People know they will protect their interests. They will, I am sure, try to be reasonable in the management of the operations of the police force.

Then you will get away from the suspicions that have developed, from battles between councils and police commissions over reports and so on. There is that kind of poisoned atmosphere.

It is public business paid for by the taxpayers' money. Have it in the open. Open it up and clear the air. Get rid of the cobwebs. Get rid of this concern about secrecy. You are not, in many cases, discussing the personal nature of individuals. There is the matter of administration, priorities and resources, and there are other matters as well, that are really in the public domain and should be discussed publicly. They should not be inaccessible, as they seem to be in most cases, to the press and to society.

You mentioned the matter of selecting more police from visible minorities and other ethnic groups. I think your report stresses that. Perhaps instead of hiring by the pound, you should hire them by IQ. You could work up a formula—the higher the poundage, the lower the IQ, and vice versa.

In other countries in the world—I made it a point to observe—one finds policemen of all sizes and shapes. They seem to function. They seem to carry out their duties. In some cases they operate in societies that are, perhaps, a little more violent than ours and more difficult. But it is not impossible for them to operate. I do not see any reason why we cannot do that here.

5:20 p.m.

That, Mr. Minister, is something on which you will have to use whatever kind of moral or political suasion you have, to ensure that is done.

The reason I am stressing this is to strengthen the confidence of the ethnic community in their police. They should have that confidence; it is not there now to a great extent. You should try to remedy that situation. While it is certainly within the realm of possibility, I am not sure it is within your capabilities to do so. Up to this point you have demonstrated a rather obstinate resistance to moving in that direction. But you can do it, Mr. Minister. If you do not, it will be to the discredit of the province, of the cities and of the communities. This is not one of those things you can leave alone and say it will go away. That problem is not going to go away. I want to stress that you have to move very quickly in that area.

I want to emphasize also that the hiring of women for police is done in some cities, but in other cities there seems to be a great reluctance on the part of police officials to hire women. I think it is very necessary that women should be hired. They can bring a special, personal understanding that is useful in police work. In the Ontario Provincial Police and the Toronto city police there are

women who have demonstrated that they can perform, but in certain communities in Ontario there are no women on the staff as policewomen and there is a reluctance on the part of the police commission—

**Hon. Mr. McMurtry:** Which forces are you referring to?

**Mr. Makarchuk:** Brantford for one, does not have any. I am sure there must be others.

**Hon. Mr. McMurtry:** I would be seriously interested in knowing, Mr. Makarchuk—in your view, because you are obviously very familiar with the situation there—whether or not qualified women have applied and have been turned down in Brantford.

**Mr. Makarchuk:** I could not say whether they have applied, but I think they have not been asked to apply. When advertisements come out, I think there is the idea that they generally take their people from the police cadets, or people who work in that group, which, of course, is strictly male.

The point is I do not think they have been asked to apply. I am not sure what the advertisements say, but I have a feeling it has not been done. It could be done and it should be done. There is another area in which you should move.

**Hon. Mr. McMurtry:** Could I ask you one more question? I would be quite happy to communicate your concern to the police commission there. Have you communicated your concern to the local police commission?

**Mr. Makarchuk:** I have discussed it with the mayor over coffee or something like that. But there has been a change of mayors. I will have to discuss it with the new mayor.

**Hon. Mr. McMurtry:** I see.

**Mr. Makarchuk:** I think it is important. As you well know, policewomen can be very useful in some situations.

I think you also have to provide direction in the idea of a crisis squad, such as you have in existence in London, Ontario. That area needs some thorough examining and some new directions from the top. Some of the problems you have in Toronto perhaps would not have happened if you had a crisis squad.

In every community the police have to act almost like social workers. They intervene in family disputes, neighbours' disputes, et cetera. If you had specially trained people with some knowledge of social problems and how to deal with them, et cetera, and some understanding of the mental problems people possibly have, that would also be to the benefit of policing in Ontario.

I want also to touch briefly on the matter of using the police for strikebreaking. It is a very sore point and it is sometimes a very difficult line to draw whether you are protecting, or allowing access to the plant, or whether you are, in effect, strikebreaking. It also creates in the community a climate of animosity which lasts for a long time when the police are involved in those kinds of situations. It may not be within your powers to resolve this problem. Perhaps we need legislation to regulate the procedure in the event of a legal strike in order to avoid hassles and police involvement. I ask you to look into this situation seriously, because it also is poisoning the atmosphere between the police and the citizens. You do not want this in Ontario, and it should not exist in Ontario.

I also want to mention the fire marshal's office. You have stated there have been a lot of prosecutions, but it seems to me there have been many arson cases of some prominence recently, including one just the other day. Have you, as the minister, tried to keep some kind of record of known arsonists—those who are in jail, those who are coming out and those who are trying to get out of jail? I know of one situation where a known arsonist was going to be released from a jail into the community. He was going to take sex therapy because of what causes him to set fire to buildings. Someone else noticed the situation and said there was no way that—

**Hon. Mr. McMurtry:** Did the Leader of the Opposition volunteer?

**Mr. Makarchuk:** No; he was not involved in the situation.

The decision was not to allow the release.

If you had some kind of a record—I am not sure whether you do or not or if the police have some kind of record—perhaps you would not have some of these problems. I understand a lot of them are repeaters and, in some of the cases I know, have been responsible for fires from British Columbia through almost every province in the country, including Ontario. This is where they finally got caught, which is perhaps to the credit of your department.

I would like to see that particular department beefed up. Arson seems to be more common these days. I feel there should be more prosecutions. It is, perhaps, an area that requires more energy and resources than you have at this time.

That is all I have at this time, Mr. Minister. I will be very happy to listen to your comments and take you on when and if

necessary in vote-by-vote consideration of the estimates.

**Hon. Mr. McMurtry:** Mr. Chairman, would you like me to respond?

**Mr. Chairman:** I think you have quite a bit of material there. You may want to respond in the votes.

**Hon. Mr. McMurtry:** Yes. Regarding Mr. Kerrio's comments as the critic for the official opposition, I will deal with as many of his remarks as I can. If I fail to deal with some of them, I am sure my attention will be drawn to them during the course of the estimates in the individual votes. It may be of help and interest to respond, at least generally, at this time, Mr. Chairman.

In relation to the funding of police forces, that is the grants that are made by the province to municipal and regional police forces, it should be pointed out that the Ministry of the Solicitor General has no involvement whatever in that. This may appear, at first blush, somewhat unusual, but I think it can be understood when you appreciate, as I am sure you do, that these grants are unconditional. Although they are referred to as police grants, there is no requirement that they must be used directly for policing. They are unconditional grants.

5:30 p.m.

Mr. Pukacz, as I recall from reading his report, was critical of the government for not making them conditional grants, stating that we should use these grants as another method to assure that the local forces were providing adequate policing to the community. You can readily appreciate that this is a very contentious issue, as it would be regarded by most, if not all, municipalities as substantial interference with local autonomy.

**Mr. Kerrio:** Who is responsible for the numbers then if it is not your ministry?

**Hon. Mr. McMurtry:** It is Intergovernmental Affairs basically and Treasury. As to the precise responsibility enjoyed by each ministry, I cannot be overly helpful. This issue has come up in the Legislature. It has come up in our own caucus, quite frankly, because it appears that regional police forces are being favoured over municipal police forces when it is quite obvious that in many cases the challenges and the extent of the challenges faced by both, are pretty similar.

I have expressed my own interests and concerns to these two ministries and the responses have been that these police grants, which are just another municipal grant, cannot be separated out from all of the provin-

cial-municipal funding, but are part of a total package. Therefore, when one is looking at grants—even though they may be called police grants—to municipalities or regional municipalities, one has to look at the total provincial funding. It provides an inaccurate picture if you simply isolate these particular grants and state that the regional forces have been favoured over municipal forces.

I am told there are many different factors, many different weighting mechanisms which produce a final result of some degree of equity, but I have indicated to my colleagues that although that may very well be the case—and I am not that familiar with the intricacies of provincial-municipal funding—it does have the appearance of unfairness because of the apparent discrepancy. I have been assured this has been taken under consideration. But concerns about the funding mechanism, the weighting factors and the whole host of other factors that relate to provincial funding generally, I am just not in a position to respond to. Again, I emphasize, none of this funding is part of the ministry's estimates, because we are not directly involved in it.

There is no question that the cost of policing is of critical importance to the citizens of the province and to individual municipalities. It is a matter that comes up, obviously, every time I meet with local police-governing authorities.

The high cost of policing in the province is of great concern to every municipality and while we accept the wisdom of the task force report of 1974 to the effect that there must be more cost effectiveness, and more planning in this area, the truth of the matter is that all of the major forces are very much involved in this type of planning. They appreciate the difficulties they are having with their police budgets and realize that they are invariably going to be called upon to do more for less. I do not think there is a major police force in the province that is not acutely aware of the fact that their work load has increased, and will continue to increase at a greater rate than their resources, so that, I can assure you, is a high priority for all police forces.

A great deal has been said about the use of civilians. The Ontario Provincial Police, in my view, has a very high percentage of civilians, 1,171.

**Mr. Kerrio:** Does that percentage vary a good deal from jurisdiction to jurisdiction, even with those outside the country? I do not know whether you make those kinds of comparisons.



**Hon. Mr. McMurtry:** We do. I think it is very comparable. The OPP probably has the highest percentage of civilians in the province, and I emphasize that fact, because that is the only force we fund or control.

**Mr. Kerrio:** Is that a throwback though, from the days when everyone had to be a policeman to function in the police department? Should some modernizing be taking place?

**Hon. Mr. McMurtry:** There is not a police force that is not aware of the fact that, in view of the reasonably significant salaries paid to first-class police constables, it is obviously in their interest to civilianize certain jobs that do not require this specialized training, and no one quarrels with that.

In order to keep this whole issue in perspective, one must appreciate that a number of these jobs which are undoubtedly less demanding and require less than fully trained people, are, quite frankly, carried on by older police officers, in many cases, by police officers who have, through no fault of their own, become somewhat infirm perhaps, who may have some chronic illness which, while not sufficient to require them to retire, in fairness to them does require they do lighter tasks, less responsible tasks. In any human institution you are going to get a certain percentage of people who are in that category and I think everyone around the table would agree that police forces should be as humane in the treatment of their personnel as anyone else.

In the large forces, you will find police officers in that category carrying out jobs that might well be carried out by civilians. True, it is costing the taxpayer a little more money because they are being paid at a higher rate of salary, but I think we would agree is a pretty humane and quite justifiable approach. So these things do balance out.

It is important to emphasize that all police forces are aware of the task force's recommendations and accept the general wisdom of these recommendations.

The matter of the elimination of free policing, of full contract recovery, is another issue we are working very hard to sort out. There is no question that there are some inequities in the province, and to say that this is a highly contentious issue, is to put it mildly.

5:40 p.m.

There are some communities being served by the OPP without any chargeback, without any contract, which probably should be paying for their policing. The argument they are making is, "By reason of our location, by

reason of other problems we face, we are disadvantaged." Perhaps it is in respect to their tax base, perhaps in respect to their geographic location. I am thinking of some northern communities which, of course, face significant challenges that southern communities do not face, and they feel that free policing is pretty equitable and justified, given their special circumstances.

**Mr. Makarchuk:** Besides, they have been used to it for a long time.

**Hon. Mr. McMurtry:** Exactly. We are trying to sort that out, but it is not going to happen overnight.

When it comes to the matter of the Ontario Provincial Police taking over smaller police forces, there are two basic issues, one of which is that we would like to do it where the local municipalities have approached us. It is related to the whole issue of free policing, but my strong recommendation to my colleagues over the last two years has been that the OPP should be given the resources to take over these smaller forces where the local communities have asked them to do so. However, with the overlapping issue of free policing and, quite frankly, the battle for resources that every ministry is going through, that process has not moved along as quickly as I would like to see.

Secondly, with respect to small-town policing generally, there are a number of smaller communities in the province which are very content with their small police forces. In recent days we have concerns expressed by some of these communities because of press reports to the effect that the OPP is going to be taking over small-town policing throughout the province. That is not the case, but the impression has been created.

Since this issue has come up we have had many communications to the effect: "We are quite happy with our local police force. We know the OPP is a great police force and has specialized training and resources and technical equipment that we do not possess. Notwithstanding those factors, we prefer our force and the traditions of our force, given the nature of our community, given what we believe to be a better understanding and a closer effective working relationship in our community, and we will be very unhappy with any change."

I, for one, am not prepared to say the province should unilaterally dictate to every community, or indeed to any community, that, whether they like it or not, if we have the resources their local police force is going to be disbanded and we are going to take over.



**Mr. Makarchuk:** It is a political lesson from Darcy McKeough that you cannot forget.

**Hon. Mr. McMurtry:** I do not think it is a justifiable policy. Obviously there are advantages in the specialized training, resources and equipment required by modern police forces, but there are also disadvantages to some smaller forces being absorbed by the OPP or regional police forces. I do not think that should be done indiscriminately. In my view, it must be done according to not only the needs, but the wishes of each community. When all is said and done, the local citizenry really is in the best position to decide whether or not it is being well policed. I do not think we should tell them whether they are being well policed or not.

The Ontario Police Commission obviously has a very major role to play in assisting and making recommendations with respect to all police forces, particularly the smaller forces, and will continue to have. Whether the number of advisers is adequate to do the audits and to meet the demands for assistance, I do not know. I am not convinced that we have sufficient resources in that respect. But that is a matter that is being reviewed very carefully by the new chairman.

On the matter of the police court security, and with respect to transportation, again, we do not quarrel with the wisdom of that recommendation. It is a question of resources. The role of the province in providing court security in all courthouses, from a legal standpoint, is relatively unclear, in my view. The suggestion that the province should provide all police security in every local courthouse throughout the province is not one I accept.

First of all, because of the role of the local police force in relation to public safety gen-

erally in the community, this role, when it comes to providing law enforcement officers to maintain public safety, does not end at the courthouse lawn. In my view, there is an inherent responsibility to provide some security and, particularly when dealing with dangerous offenders who are being either transported or have been tried in a courthouse, there is a function for the local police force. Just to hand that over to civilians, holus-bolus, assuming we had the resources, might very well place the local citizens in jeopardy, without the protection of trained police officers when transporting some of the more potentially dangerous accused, or in providing security in the courthouse.

I think what we are asking is what is the proper balance. We have recognized that the province has a role in courthouse security and we will attempt to increase our role, again, as resources permit.

**Mr. Chairman:** I am sure that you have opened up a topic that Mr. Lawlor and a number of other members will want to get into. Unfortunately, we do have a vote to take in the House. I am therefore going to carry over—

**Mr. Kerrio:** It is a very important bill on the floor, by Mr. Williams. The Solicitor General should be there to vote on it.

**Mr. Chairman:** There is a very important bill on the floor concerning women's rights. I think all of us want to go to vote in favour of it. Therefore, we will carry over this vote and continue it tomorrow.

We stand adjourned until Friday, after routine proceedings.

The committee adjourned at 5:50 p.m.

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**From the Ministry of the Solicitor General:**

Hilton, J. D., Deputy Solicitor General



No. J-28

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Solicitor General

**Fourth Session, 31st Parliament**

Friday, November 14, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, NOVEMBER 14, 1980

The committee met at 11:59 a.m. in room 151.

### ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

(continued)

On vote 1701:

**Mr. Chairman:** I will recognize a quorum. I have for members of the committee an article which I asked Mr. Kerrio to provide to us since he was referring to it yesterday. That will be distributed.

We have 13 hours and 12 minutes left. As I recall, we had not carried the first vote on these estimates, and the Solicitor General was in the process of continuing his remarks in response to the two opposition critics.

**Hon. Mr. McMurtry:** At this point, I think I have said as much as I need to say in response with respect to the grant structure, police contracts, free policing and the Pukacz report. If there are any other questions that any of the members of the committee wish to direct my attention to in any of these matters, I would be happy to respond. I have tried to respond in very general terms.

**Mr. Kerrio:** I am surprised that you have not given us copies of the book, *Derailment*. I was going to pose a question about it.

**Hon. Mr. McMurtry:** I was told they had been distributed to all the members.

**Mr. Kerrio:** There may be some copies here.

**Hon. Mr. McMurtry:** I was told all the members of the Legislature had received a copy.

**Mr. Chairman:** I know I received one.

**Mr. Kerrio:** I had mine back at the office and I thought there would be a few copies here.

Just to get your feeling on matters that have been—

**Hon. Mr. McMurtry:** Did you want me to finish my remarks, Mr. Chairman?

**Mr. Kerrio:** I am sorry, I thought you had finished. Go right ahead.

**Hon. Mr. McMurtry:** That police are using countercharges to intimidate individuals who

are thinking about laying charges or who have laid charges is an allegation we hear from time to time; although I must state that most of the complaints I hear are in the converse situation: That is, there are some lawyers, it is alleged, who, when retained by someone who has been charged with assaulting a police officer, as the first line of defence attempt to have a countercharge laid by the accused.

The only way I can respond to any sort of blanket allegation is to ask members to invite any individual citizens with specific complaints about specific cases to bring them to our attention. We will deal with the complaints on an individual basis. I do not accept the allegation that this is a policy deliberately pursued by police forces. Whether there are individual police officers who have embarked on that course of action from time to time, I am not in a position to comment one way or the other.

The matter of political involvement is a very interesting issue raised by Mr. Kerrio. I am strongly of the view that any police association would be most unwise to get involved in the political process by way of endorsing any individual candidate or political party. I was encouraged that the Metropolitan Toronto Police Association made it clear, following a number of charges and countercharges, that they were not endorsing any candidates in the recent municipal elections, and that their association was not taking an official position. In my view, that was a wise course and the only sensible course.

Obviously police forces are engaged in the most sensitive of all occupations, that of law enforcement. They bring before the courts individual citizens who are often charged with criminal offences. Whether the offences are serious or not, a perception that their decisions in relation to the laying of charges would ever be influenced by partisan political considerations would be totally abhorrent and totally destructive to public confidence in the police force.

If individual police officers, on their own time, wish to support individual candidates,

I am not in a position to say they do not have that right. I am not talking about who they choose to vote for, because obviously they have that right. If they want to, for example, knock on doors, my own view is that it is a right, but it should be exercised with the utmost of discretion.

Police officers who wish to engage in this important political involvement in a free society should do so as individual citizens, and not as police officers. For example, if police officers were to go door to door and represent themselves as police officers supporting a particular candidate, that would be very unwise and could only undermine the confidence of the public in the police. Political activity of that nature, on an individual basis, in my view should be exercised, if at all, in a very cautious manner.

**Mr. McGuigan:** Mr. Minister, what if they were doing that on their own beat, for instance? Do you have any feelings about that?

**Hon. Mr. McMurtry:** My concerns would be even greater. I was talking about the possibility of a police officer, on his own time and in civilian clothes, who wants to knock on doors to support a candidate. I am not prepared to say that should be prohibited. I was indicating that caution and discretion should be employed.

If a police officer is campaigning on his own beat, in or out of uniform, the perception would be that he is campaigning as a police officer, and I think that would be a great mistake and should be discouraged.

For example, we do not allow judges even to vote. Police officers, while they are not judges, do exercise a judicial type of discretion in their day-to-day activities. I think many of the same principles should equally apply. I hope I have made myself very clear in that respect.

**Mr. Kerrio:** There is some discussion about associations becoming involved. I appreciate the way you have put it on the record, and I am satisfied. I cannot take exception to that kind of involvement.

**Mr. Makarchuk:** Mr. Minister, just putting it on the record does not necessarily make it effective. What actions would you consider, in terms of regulations or directives or whatever power you have, to get this information down to the various police associations and police commissions throughout Ontario to ensure this does not happen? I also have a concern where the, shall we say coercive arm of the state becomes a legislative arm of the state.

**Hon. Mr. McMurtry:** I would be very interested to have the views of the members

of the committee whether such regulations or legislation are necessary. I would hope it would not be. We have regulations with respect to Ontario Provincial Police not being directly involved as candidates. I forget the exact wording of that regulation. Perhaps the Deputy Solicitor General can assist.

We ran into a rather unpleasant situation where an Ontario Provincial officer chose to become a candidate. I use the word "unpleasant" in a rather general context; he chose to become a candidate for the Progressive Conservative Party in, I believe, the Nickel Belt riding. Charges have been laid under the Police Act. I do not know whether those charges have been disposed of or not. I think perhaps the validity of the regulation prohibiting such activity is at present being challenged in the courts.

To my knowledge municipal police officers are not so restricted.

**Mrs. Campbell:** They also run for office.

12:10 p.m.

**Hon. Mr. McMurtry:** I welcome their support. But again, I am not convinced, at this point, that it is necessary to bring in regulations or prohibit a police officer from running as a candidate. For example, Mrs. Campbell is referring to the former president of the police association of Metropolitan Toronto who ran in one of the Scarborough ridings.

**Mrs. Campbell:** I believe he is still a police chief.

**Hon. Mr. McMurtry:** I think he enjoys that legal status, yes.

**Mrs. Campbell:** Does everyone else enjoy it?

**Mr. Kerrio:** The guy says, "Do not give me any more promotions, just give me a raise."

**Hon. Mr. McMurtry:** Again, I think the public is generally sophisticated enough to accept these candidates from time to time without coming to the view that the police forces are becoming highly politicized. It is something on which I would be pleased to have the opinion of the members of the committee because it is a troublesome issue and your views should be made known.

The matter of the high speed pursuits: Yesterday Mr. Kerrio asked me to obtain copies of the latest Ontario Police Commission guidelines. I think the best thing is to have them distributed to members of the committee because it may be something you will want to discuss during the course of the estimates. Mr. Hilton will make them available to the clerk to duplicate and distribute to the members of the committee.

I might say these guidelines were re-drafted a year or so ago. Some changes were made, not major changes. I was at the Ontario Police College within the last couple of weeks and I was assured by the new director of the police college that this whole area was being stressed in training and education, that is the guidelines and the caution that must be exercised any time a police officer believes it is necessary in the public interest to engage in a high speed pursuit. The crucial, obvious importance regarding the matter of general public safety is the highest and most important consideration.

**Mr. Kerrio:** Just one question: Since you have been investigating this concern many people have, have you ever talked with the Attorney General about looking at the vehicle as a lethal weapon to most people involved when it is involved in a high speed chase? Have you talked about doing something concrete about reimbursement for those involvements? Has there been a real assessment of that end?

Would that have any impact, do you think, on—

**Hon. Mr. McMurtry:** Both the Attorney General and the Solicitor General are forever making public statements about automobiles being lethal weapons, which we all recognize. As you know, highway safety has to be a major concern of any Solicitor General or Attorney General.

One of the matters we were discussing at the police college recently during my last visit was the fact that we are upgrading driver training generally, not in relation to police pursuits, but we are going to give it an even greater emphasis at the police college, notwithstanding the fact that individual police forces tell us they emphasize it. Because quite apart from—

**Mr. Kerrio:** Yes. But I am thinking of penalties. Have you talked about—

**Hon. Mr. McMurtry:** The importance of emphasizing, particularly to the young police officers, the important roles they play, and the role model they play too in driving responsibly, is not only for the sake of themselves and others using the highway but because of the example they can set for others.

I do not attend very many films, unfortunately, in any one year, but it is very rare to go out to a movie these days without seeing people driving like maniacs and smashing cars. It seems to be a major element of entertainment so far as the film industry is concerned. I do not think it should surprise us that we see the odd youngster driving like a maniac on the highway when the wonderful

people who bring us these films seem to think this is a high source of amusement and entertainment. The degree of irresponsibility represented in that area of the entertainment business concerns me a great deal.

**Mr. Kerrio:** Has there been a change, though, in the penalties?

**Mr. Makarchuk:** I wonder, Mr. Minister—

**Mr. Kerrio:** Just a minute. Before you get in, I asked a specific question. Has there been a change in penalties assessed, maybe taking some youngster and putting him on the ambulance for six months and letting him go and pick up some of the broken bodies, something that is going to be a deterrent? I am not suggesting we should clap them in jail. I am trying to get these young people to be aware of what happens when they decide it is going to be fun to try to elude the police. I wonder if you have thought about that aspect of it.

**Hon. Mr. McMurtry:** There has been some discussions with respect to making driving to elude a police officer who is lawfully engaged in carrying out his responsibilities an offence in itself, quite apart from a charge of dangerous driving or criminal negligence, but just to make the fact of—

**Mr. McGuigan:** Resisting arrest.

**Hon. Mr. McMurtry:** Yes, or driving at a high speed to escape arrest for an offence even without necessity of establishing the other criminal aspects of the driving itself. That has been reviewed by our law officers and is being considered in relation to the Criminal Code review going on at present.

**Mr. Makarchuk:** Do you have these guidelines at this time or are you in a position to institute some guidelines as to when to initiate hot pursuit, if I could use that term; or is that left to the local police departments, or does the individual policeman make a decision on the spot?

**Hon. Mr. McMurtry:** We have guidelines the OPC distributes. They are being copied now and will be given to the individual members.

**Mr. Makarchuk:** If there is an infringement of the guidelines or you feel the officer was negligent in embarking on the pursuit, are you in a position to take disciplinary—

**Hon. Mr. McMurtry:** Officers are charged under the Police Act and charges have been laid under the Police Act for what we regard as misconduct in this area. At present, charges are pending in several police jurisdictions.

**Mr. Makarchuk:** It appears to me from the news reports one reads these days that gen-



erally more damage is done as a consequence of the hot pursuit than was caused by the misdemeanour that originally initiated that pursuit. Perhaps some other methods might be used.

**Hon. Mr. McMurtry:** I think most police forces can produce fairly dramatic evidence as to what has been accomplished when it has been necessary to engage in high speed pursuits. The Deputy Solicitor General is just reminding me of a project that is under way at present through the Ontario Police Commission, in which we have asked for a quarterly return on high speed police pursuits from every police department. They report on the number of pursuits; the reason for each pursuit; the number of pursuits abandoned; the number that resulted in death or injury, or property damage; the number in which charges were laid; the number in which the use of firearms was involved; and the number in which drivers were impaired by alcohol or drugs.

12:20 p.m.

We have made it very clear that while we are not, as I have said in the Legislature, prepared to prohibit high speed pursuits, we are very concerned about them. I have had a number of discussions with the Ontario Police Commission, since I became Solicitor General, expressing my concern. While I do not believe it would be in the public interest to prohibit them, they should be monitored very carefully because, undoubtedly, there are pursuits from time to time that probably should not occur. The Ontario Police Commission, I am satisfied, recognize this as a matter they have to give a very high priority to. The discussions have not just occurred in the Legislature, they have been the subject matter of discussion with the police commission, and there was considerable discussion when I met with all the police chiefs at one time at the police college last spring.

**Mr. Makarchuk:** What is the consensus among the chiefs themselves? What is their feeling on these matters?

**Hon. Mr. McMurtry:** I have not done an individual poll of the chiefs, of course, but they all believe it is necessary on occasion to engage in high speed pursuits. Certainly, judging by the general discussion, no police chief took issue with the rather obvious statement that public safety must be given the highest priority and no arrest or charge was worth seriously jeopardizing the life of anyone.

**Mr. Chairman:** On this point, Mrs. Campbell.

**Mrs. Campbell:** I have some very real concerns, Mr. Chairman, with the feeling that you have to leave this kind of decision, an on-the-spot decision, to the judgement of an individual police officer. It does seem to me there should be some guidelines where one precludes this kind of thing.

For example, have you given any thought to the number of chases in which they are pursuing someone on a matter of some slight property damage? Do you not think you could take into consideration that kind of a picture in the judgement area? You just do not risk the lives of innocent people, either motorists or pedestrians, because someone is thought to have robbed a house or something.

I have always felt that in this country we put more emphasis on crimes of property than crimes against the person anyway. But would that not be an approach you could take so you do not leave the—

**Hon. Mr. McMurtry:** I think that approach is adopted in the guidelines. But what I would like you and the other members of the committee to do, Mrs. Campbell, before the conclusion of these estimates, which will be going on for the next two or three weeks, is to look at the guidelines. I would be very pleased if any of you would like to make any suggestions with respect to further refinement, additions, or alterations and amendments that could bring home the message that we all want to bring home to the individual police officer. I would hope that you would have a chance in your busy schedules to look at these guidelines and to give us any suggestions.

Because, you know, we are not claiming any degree of perfection with respect to these guidelines.

**Mrs. Campbell:** You are not infallible.

**Hon. Mr. McMurtry:** We recognize that in the final analysis it must depend on the individual judgement and common sense of the officer. But in that judgement, because often a judgement has to be arrived at in a matter of seconds, depending on the seriousness of a situation, the officer should have as careful and as comprehensive guidelines as it is humanly possible to provide. We therefore welcome your suggestions in that regard.

**Mrs. Campbell:** Are those police officers who tell us they can be punished if they do not actively pursue correct? I think it is a totally intolerable situation if that is the case. You do not know whether you are going to be punished for doing the job or punished because you did not. I do not think a guideline is helpful in that kind of situation.



**Hon. Mr. McMurtry:** I am not sure I understand you. What are you suggesting with respect to the area of punishment?

**Mrs. Campbell:** They can be charged, as I understand it, under the Police Act, with a failure to carry out their duties if they do not engage in a hot pursuit.

**Hon. Mr. McMurtry:** Yes.

**Mrs. Campbell:** They can also be charged if they do engage in a hot pursuit. Would you want to be in that position yourself?

**Hon. Mr. McMurtry:** What are you suggesting as an alternative?

**Mrs. Campbell:** I am suggesting, through you, Mr. Chairman, that perhaps a guideline is not enough to protect either the public or the police officer.

**Hon. Mr. McMurtry:** When you have had a chance to look at the guideline you can advise me on any other policy or legislation or regulations you think would be helpful. To me, this is as good an opportunity as any we have to consider these crucial matters.

**Mr. Makarchuk:** It is a very touchy situation. I do not think we could specifically say, "No, you cannot do it"; or, "Yes, you must do it every time." It is in sort of a never-never land, I suppose.

I just went through this memorandum you have submitted and I noted the idea that there should be adequate judgement on the part of the officer before he embarks on a pursuit and that he is capable of driving and has had training to drive fast without creating problems, et cetera.

Are there programs, or do you plan to institute programs in Ontario with the various police departments to instruct officers in the art of hot pursuit? Are they taught under what circumstances, what must be taken into account, the precautions that are necessary, the concern for public safety, as well as the driving skill that is required in order to carry it out successfully? Do you have anything of that nature on the books right now?

**Hon. Mr. McMurtry:** We are advised that all police forces conduct this type of training, quite apart from what is taught at the police college. I think the Deputy Solicitor General wanted to add something to what I have said.

**Mr. Hilton:** This matter has been discussed many times with police associations and other responsible police officers. The general feeling I get back from these senior police officers is that if you set a city limit and a rural limit, say 45, 50, 60, it would only be a licence to the escapee to go five miles an

hour over that limit and off he would be. It would quickly be known among the criminal community. So those types of guidelines or legislative restrictions would be defeating the whole police purpose.

12:30 p.m.

It is generally perceived that when a police order to stop is given to a vehicle which may be driven erratically or too quickly, sirens are activated and lights are put on ordering the vehicle to stop. If the vehicle takes off, there is prima facie evidence, let's put it this way, that the person has an adequate reason for taking off.

I think of a specific example near Belleville about a year ago where just that happened. The car was moving at a very high rate of speed and passed a police cruiser, who immediately put on his siren and lights, indicating to the driver to stop. The driver drove even more quickly and he was chased. He outran the chaser.

Through the use of the radio others took up the chase farther down the line and the vehicle was eventually stopped. It appeared that the vehicle was stolen. This was an incident I think Mrs. Campbell would probably refer to as property loss.

**Mrs. Campbell:** I cannot think of anything else it would be.

**Mr. Hilton:** Just a minute; let me tell you. The officer inquired about the loss and they said: "We are going to hold this man on theft of a vehicle. Would you advise the owner of the vehicle that it has been found?" The police in the district where he lived went to his home and found him dead. As a result a murder charge was laid, and the person who was apprehended in the car chase confessed.

All I am saying, really, is when someone does not respond to an order to stop, one never really knows what factor is motivating the escapee. It may be a minor thing. It may be that there are drugs in the car; it may be that he has been the perpetrator of other crimes—and, my point in this case—up to murder.

In the interest of the public one cannot disregard—and this I get from the police all the time—even such a seemingly minor infraction as just driving at an excessive rate of speed, which is in itself a danger to the public. It does not fall within the property situation, yet it appears to the public to be less serious than property theft.

**Mr. Kerrio:** It is a dangerous weapon then.

**Mr. Hilton:** It becomes a dangerous weapon as you say.

This is a complex thing which has given the chiefs and the chiefs' association a great deal of concern. I have discussed it with them and, in an effort to get a little more information, I have sent questionnaires to be completed quarterly in order to keep our figures up to date and give us a little better hold on the whole matter. They keep pointing out, of course, their obligations to apprehend.

**Hon. Mr. McMurtry:** We look to other jurisdictions, needless to say. For example, in Great Britain we find they have more extensive use of roadblocks, but we are very reluctant to encourage that because they have some horrendous situations. They put roadblocks just over the brow of a hill—

**Mr. Kerrio:** You have not really answered the question about deterrents.

**Hon. Mr. McMurtry:** What do you mean? Maybe if we understood your question a little bit better—

**Mr. Kerrio:** What I am talking about is punishment suited to the crime—this dangerous weapon, the individual?

**Hon. Mr. McMurtry:** Not the police officer, but the offender.

**Mr. Kerrio:** Yes, the offender. Have we really done anything at all on that other side? Has the Attorney General said, "We are not going to put up with this"? It is like carrying a gun is committing a crime. It is a crime.

**Hon. Mr. McMurtry:** That is right. We have stressed in discussions and directives from the Ministry of the Attorney General to our crown attorneys to press for tougher sentences in matters relating to serious driving offences. We are often dissatisfied with the quality and severity of the penalty handed out.

I think we all have to face up to it, as citizens of the community; neither the courts nor the police are ever going to resolve this problem. They can have an impact, obviously. We are talking about serious attitudinal change in the community as a whole.

When we live in an era in which large, or now even small, powerful vehicles are glamorized to the extent they are; when automobile manufacturers use as a prime selling device power, speed, even going to the point of giving highly aggressive sounding names to most of the models they manufacture; when the entertainment industry finds it an enormous source of amusement to drive recklessly and smash cars; it is no wonder we are educating generations of people who do not give highway safety a high priority.

**Mr. McGuigan:** They took the sales tax off the high-powered vehicles last night. That is where the kids are turning now. They cannot buy a big engine in a car so they are turning to the pickups and vans.

**Mr. Chairman:** Mr. Renwick, do you have a question on this topic?

**Mr. Renwick:** Not on the exact point but about police chases; Mr. Kerrio was dealing with the deterrence question. An incident which concerned me in my riding was a police chase which took place just before school opening, at about a quarter to nine, about a year ago now in the Riverdale area. I was very much concerned about it at the time. After a number of telephone calls, the Deputy Solicitor General gave me, in confidence, a copy of the police report. I think I got it the same day the chase occurred in the riding and it was a frightening account of what took place. It is a miracle that no one was killed during the course of that pursuit.

My point is this: There were a number of cars involved in that police chase in the riding. The control of the cars, as a group, was the responsibility of the dispatcher in directing the participants in that chase. My concern about the instructions given about high speed pursuits is that they are blanket instructions as if all parts of Ontario were identical and the same. I think it is most important that serious consideration be given to breaking this down about pursuits in open country; pursuits on highways; pursuits in builtup areas.

That kind of distinction has to be made because, according to this, it is the responsibility of the individual driver of the car involved in the pursuit to decide what he is to do. The emphasis, it seems to me, in the case of the chase I was referring to in my riding, is that the individual police officer, of course, is doing his duty. His obligation is to apprehend the offender, to pursue and arrest if he can do that in such a way as to accomplish his obligation.

12:40 p.m.

The problem in that case, as I see it, was when the cars were involved, at a certain point somebody should have called off the pursuit. In other words, the circumstances of the particular persons who were being chased, their whereabouts, who they were, meant that they would have been apprehended somewhere within the city within hours without that pursuit having taken place.

It does seem to me a much more discriminating type of instruction with respect to police pursuits must be given for highly builtup, urban residential areas such as the riding of Riverdale where, as people know, the streets are narrow, usually congested, where there are large numbers of children going to and from school, and all of those kinds of questions have to be addressed.

I think the emphasis in this memorandum is not adequate for that purpose. It should, of course, emphasize the responsibility of the individual police officer, as is stated here: "As a result of an in-depth study and evaluation of the problem, we have concluded that the final decision as to whether or not a police chase should take place must rest with the individual officer on the scene. He is in the best position to assess the situation and to decide on the best course of action in the circumstances. The quality of his decision will be a reflection on his training, experience and ability."

I do not have any particular objection to that, but when other cars are called in to aid and there is a control mechanism involved, then there has to be an emphasis on the responsibility of the police officers directing the chase; at some point they must have the responsibility for exercising a discretion to call it off. The balance of the public good does not mean they can risk—as could have happened that morning in Riverdale—a severe injury to one or more children on their way to school or to the usual people moving to and fro in that area. My recollection is not precisely clear, but I think at one point there were upwards of 10 police vehicles involved in that chase during a very short period of time, at very high speeds, in the area.

That is the first point, and I would hope the Solicitor General would take that under serious consideration and break down this omnibus, high speed pursuit thing into categories with respect to the different types of problems that may arise in different parts of the city.

I would share with the Solicitor General a concern about road blocking in a highly builtup residential area. Road blocking on the highway, in certain circumstances, may possibly be a justifiable method of stopping an escapee in a vehicle. I am not suggesting I know all of the distinctions, but I think a single directive for the whole of Ontario, as if the whole of Ontario had some uniform pattern to it, is not adequate at this time and consideration should be given to that.

**Hon. Mr. McMurtry:** I think you made a

very valid point, Mr. Renwick, and we will certainly look at that.

**Mr. Hilton:** Although I do not have them all here, I have with me the instructions that go out from individual police forces suitable to the individual locale in which they may happen. I have those from Halton; I believe Hamilton, although it is not stated; Niagara region; Peel; and the OPP covering the more rural type areas. So the guidelines have some sort of general conformity, but police departments are encouraged to make their own guidelines applicable to the areas they serve, as you have suggested.

As you know, I was born and brought up in the area of this chase; I went to Riverdale Collegiate and I know every one of those streets. Like you, I shared a good deal of concern when I saw that, having regard to exactly what you have said, the narrowness of those older streets with parked vehicles. I have driven around the area many times myself.

That particular chase finally involved a very senior member of the Metropolitan Toronto police, I think, taking some degree of control; a very senior person who just happened to be there.

**Mr. Renwick:** Mr. Chairman, I think the deputy misses my point. I am not engaged in arguing about it, I am simply saying that the police commission has a responsibility, not to encourage and urge and so on, but to construct their own specific guidelines with respect to very different parts of the community. If you are telling me the Metropolitan Toronto police have already done what I am saying should be done, then I would be glad to see it.

My point is very simple, and I want to emphasize it; the controlling officer of the police chase in that case should have called it off. It was a mistake for that police chase to have continued. It was not a dereliction in duty of any individual officer in an individual police car, performing his obligation. It was a responsibility of the dispatcher or the control officer to have called off that chase. If there is already that directive in Metropolitan Toronto, then I am quite happy about it.

I happen to know, as the report indicated, that the senior police officer in the area, the inspector from the division, happened to be going through the area that day and was himself involved in the chase. My reading of that report was that it was not because of the accidental presence of the inspector on the scene that prevented an accident from taking place. I was very concerned that the appear-



ance, by accident, of the inspector on the scene did not lead to that chase being called off at that time.

That is my point. Let me go on to the other. I do not want to take up a lot of time on it; I think the record is clear as to what my concern is.

My other concern is the vexed question of—it is not about whether police officers can break the law in general, I am talking about the strange Highway Traffic Act which has certain exemptions for police and not other exemptions for police. I gather the police can do certain things and, in fact, are not breaking the law under the Highway Traffic Act, but in doing those very things they are probably committing other infractions under it. I think careful study should be given to relieving the police from specific traffic offences because I do not want the police to get the idea that, in the absence of some specific exclusion, they have some general immunity from the law.

The law has to be clear as to what the police can and cannot do. I would rather have it framed that way than have this ridiculous situation we have now where he may be exempted from the speed requirement but he may be guilty of an illegal left turn or something in the course of the performance of his duties. That is related to highway traffic. I am not getting into the broader question of breaking the law in the performance of some greater duty, that is another area, but I do think the Highway Traffic Act should be looked at very carefully in relation to the policeman's position when he is in a vehicle, engaged in carrying out his lawful duties.

**Hon. Mr. McMurtry:** I think Mr. Renwick's purpose was to ask me to take both these issues under advisement and I will certainly be happy to do so. There is a great deal of merit in what he has suggested.

12:50 p.m.

**Mr. Williams:** Very briefly, Mr. Minister, with regard to the high speed chases and the deterrents that are used, you made reference to the fact that the use of roadblocks is quite prevalent in the UK; it is not done so much here.

On one occasion—I cannot recall whether you were being questioned on the matter in the House or in committee—you made reference to the fact that one of the other types of deterrent being looked at at that time was one which was being used quite successfully in the US, I believe. This was some type of carpet that could be thrown on the road. I guess, basically, it has spikes in it that will

puncture the tires of the vehicle being pursued and slow it down in a safe manner.

**Hon. Mr. McMurtry:** It is regarded as a form of roadblock.

**Mr. Williams:** I was thinking of the conventional type of roadblock when we were talking earlier.

I was wondering what the disposition of that matter had been. I think you indicated at the time you were going to look into whether it was something that could be seriously considered as a way of assisting our law enforcement officers in applying a new type of deterrent, that is if it is a new type we have not already used in this jurisdiction.

**Hon. Mr. McMurtry:** I will find out just what happened to that suggestion. I do not know if we have the information now or not.

**Mr. Hilton:** It is my recollection that it was taken by me to the chiefs of police association. They did not approve the usage of it. They considered others might run over it and it would not necessarily stop the vehicle; it might drive a vehicle with a punctured right front wheel out of control or do other damage. Their whole consideration was that, yes, it was experimented with in some jurisdictions. It had not been universally or even generally accepted as a scientific means of carrying out their objective.

**Mr. Williams:** I thought it had been used on more than an experimental basis. I thought that some of the states in the US were actually using it as a standard piece of equipment.

**Mr. Hilton:** I think one or two are, Mr. Williams, yes; but it has not been accepted by the others.

**Mr. Williams:** And still they felt it was not the route to go at this time?

**Mr. Hilton:** They, and their men who will be driving, did not approve it, no.

**Mrs. Campbell:** We did discuss the point I am trying to get to the last time around, I think, although I do not recall at this point the answer given.

I just do not understand why, in this age, we cannot have a system by which a police officer in a vehicle can alert another police officer to stop a vehicle farther down the road. Even in a city I would think they would be able to do that. I do not recall the answer.

**Hon. Mr. McMurtry:** That is often done.

**Mrs. Campbell:** But it does not seem to be done in these cases reported in the press which wind up with people dead.

Why cannot that be done on a regular basis?



**Hon. Mr. McMurtry:** I am advised it is done. I am told that any time a police officer engages in a high speed pursuit, he advises his dispatcher. It is the responsibility of the dispatcher, who should know the location and instruct other vehicles in the vicinity, where appropriate, to assist.

**Mrs. Campbell:** Yes, but Mr. Renwick's case is a case in point. The assistance got into the chase, too.

**Mr. Hilton:** No.

**Mrs. Campbell:** That is what happened there, wasn't it?

**Mr. Renwick:** There were a number that got into the chase.

**Mr. Hilton:** Some got into the chase, but what happened is there were not enough vehicles which could come down and the fleeing car would make a turn on a road where there was not a vehicle ready to stop it quickly. I am thinking of one in Hamilton where they went through school yards and everything else. Time and again the chasing vehicle found that the other vehicle was getting beyond what the officer considered to be a reasonable rate of speed, having regard to the district into which they were driving. They called up another and another and another. In the end, about eight cars were there. But the others fell off from the chase.

If I was going down Yonge Street, and was at such and such a corner, if it was so far ahead of me, they would bring another car in at the approximate place. So he did not have to make up the distance behind the other vehicle by driving at a very high rate of speed. That was done all through the city of Hamilton. To a degree, it was done in the circumstance Mr. Renwick refers to, if I recall the report correctly.

**Mrs. Campbell:** The other question: The minister has given to us this memo referring to guidelines. I wonder if we could have copies of the reports to which he referred for, say, the last two years, giving the statistics of the chases, the circumstances of the chases, and so on. That would help us in analysing this problem.

**Hon. Mr. McMurtry:** I indicated a few minutes ago this was something that was just started last spring.

**Mrs. Campbell:** I'm sorry. Then, could we have whatever is available?

**Hon. Mr. McMurtry:** Yes. I do not know what is available. We will look into that.

**Mrs. Campbell:** I thought you had said they were required to report.

**Mr. Hilton:** There will be a compilation in January.

**Mrs. Campbell:** Oh, not before January.

**Mr. Hilton:** We are awfully interested in that.

**Mrs. Campbell:** I do not know how we can deal with guidelines if we do not have the information.

**Mr. Bradley:** In his opening statement, Mr. Kerrio made a request as follows, "I would like to ask the minister to table in this committee the report of the task force on police service delivery in the Ontario Provincial Police so that all members may have a copy of it and so that we may fully discuss its recommendations during the votes related to the OPP."

It is my understanding that the minister gave an undertaking to share the contents of that particular report, but we did not actually get a commitment, as I understand it from Mr. Kerrio, to have that report produced and tabled for members of this committee. Would the minister undertake to do that?

**Hon. Mr. McMurtry:** As I attempted to explain at some length to Mr. Kerrio, as it is a first volume of an internal study, I did not think it was in anyone's interest to make it a public document because it could create the impression it was a final report. It is not clear from the report that this is a first document.

I have indicated I would be prepared to share the contents with any member who is interested and I would be interested in your views, Mr. Chairman, as to how this might be done. But I think, in fairness to the Ontario Provincial Police who are very anxious to respond to the initial report, that to make public an incomplete report to which the OPP wishes to respond would be regarded, from their standpoint, as being a little unfair.

As I said in your absence and in the absence of everyone here today, the whole object of the exercise is to demonstrate the needs of the OPP during the 1980s, which I happen to believe will be greater than is believed by, perhaps, some of my colleagues.

We must take into consideration the nature of this exercise, and the nature of some of the premises adopted in this report, such as, "Assuming the present level of service is satisfactory, we believe this and that might be done." There is no great mystery about the report. I just would like to be able to find a way to share it with the members of the committee and not make it a public document. I do not know enough about the procedures.

**Mrs. Campbell:** I think, around here, you can really trust the members, if they get a document and you are prepared to discuss the contents but not the report.

1 p.m.

**Hon. Mr. McMurtry:** We are prepared to discuss the report. We are prepared to discuss anything in relation to it. If the members are prepared to state at this time they realize it is incomplete, we can certainly shorten the discussion by saying that we will regard it as a—

**Mr. Chairman:** Draft.

**Hon. Mr. McMurtry:** —draft report and that it is not yet a public document. I am quite prepared to discuss all and any aspects of the report.

**Mrs. Campbell:** And then presumably, following that, we would also get a copy of the response of the OPP, so we too could know what the circumstances are.

**Hon. Mr. McMurtry:** Yes. We have not seen it yet.

**Mrs. Campbell:** You have not seen the report?

**Hon. Mr. McMurtry:** Not the response.

**Mr. Chairman:** Do we have the agreement of the committee that it will be issued to us, as the members of the committee, for our own personal use only in the work of this committee; that it is not to be given to anyone other than members of the committee, and that it will be seen as a draft report?

**Mrs. Campbell:** I do not quite know what you are asking. Do you mean we would not give it to, for instance, the press?

**Mr. Chairman:** That is my intent.

**Mrs. Campbell:** But if we are able to discuss the contents, I am a little in doubt as to what the prohibition would be. I am prepared to accept it as a draft—

**Hon. Mr. McMurtry:** On the understanding that it is a draft, preliminary report.

**Mrs. Campbell:** —on the understanding we could discuss the contents.

**Mr. Hilton:** I have termed this document—and I thought Mr. Kerrio had accepted the position—a management tool. We heard various comments and we asked our internal people—Mr. Gow, who is sitting beside me, and others—to seek out certain information for us in relation to the operation of the OPP, and to let us have their recommendations. The only exception was one member of management board, who took part in this study because I asked Mr. Butler to make an independent person available to me so it might

not be just a perception of my thoughts. As a result of that, they embarked on this study and came up with some results which, as the minister has said, are not being commented upon.

When you look at it you will see that the report itself says further study has to be given to this area and that area. In other words, it does not purport to be conclusive in those areas. It records what they saw and did. But it was—and I would like this to be clearly understood—a management tool prepared for our assistance in relation to the operational management of this ministry.

**Mrs. Campbell:** I am quite prepared to accept it as a draft report, Mr. Chairman.

**Mr. Hilton:** It is not really a draft. It is just incomplete.

**Hon. Mr. McMurtry:** Let's refer to it as a draft. That is fine by me.

Quite frankly, Mrs. Campbell, if it were to find its way to any of our friends in the press, I would not be unduly concerned about it. The perception—

**Mr. Renwick:** If it is marked confidential, that is where it will find its way.

**Hon. Mr. McMurtry:** And it may have already.

There is nothing very mysterious about it. It is just that the Ontario Provincial Police feels it is somewhat incomplete, and for us to release it without them having had an opportunity to respond would be regarded as, perhaps, a breach of faith.

**Mr. Chairman:** I think we have reached a consensus on that matter.

**Hon. Mr. McMurtry:** But it is a useful report. The people who prepared it worked very hard within fairly tough time restraints. Generally, although I have described it as an incomplete report, I think there was a very useful effort put into the report and it will be a very helpful basis for further reports to assist the government in determining the level of funding we can anticipate, necessary in the public interest, during the 1980s.

**Mr. Chairman:** Before we take the vote and before people disappear, I would like to go over our schedule for next week to make sure that everyone understands it. Of course, you will find it in the orders.

We will resume consideration of the estimates of the Ministry of the Solicitor General next Thursday, starting with the second vote, assuming we carry the first vote right now.

Next Wednesday, the committee will consider Bill 118, An Act respecting the Regis-

tered Insurance Brokers of Ontario. No witnesses have contracted the clerk as yet, to appear on Wednesday. However, we understand there are two groups who may want to appear on Wednesday who have not yet contacted our clerk. So it is possible.

Also, the Ontario chapter of the Risk and Insurance Management Society want to present a brief to us on Friday. Apparently they are out of town earlier and cannot appear before Friday.

Our schedule is as follows: Bill 118 on Wednesday; continue with the Solicitor General's estimates on Thursday; and then on

Friday, after routine proceedings, resumption of consideration of Bill 118 and we will hope to dispose of it at that time, although that may not be possible.

**Mrs. Campbell:** I thought we were trying to get a response for Wednesday and perhaps try to sit all day.

**Mr. Chairman:** That was my hope. However, when we have witnesses who say they simply cannot appear, I think we have to pay some attention to that.

Note 1701 agreed to.

The committee adjourned at 1:07 p.m.

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### From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Solicitor General











No. J-29

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Solicitor General

**Fourth Session, 31st Parliament**

Friday, November 28, 1980

Speaker: Honourable John E. Stokes

Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FRIDAY, NOVEMBER 28, 1980

The committee met at 12:18 p.m. in room 151.

### ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL

(continued)

On vote 1702, public safety program:

**Mr. Chairman:** I will recognize a quorum.

**Mr. Makarchuk:** Does this vote deal with the fire services?

**Mr. Chairman:** It deals with forensic pathology.

**Mr. Makarchuk:** I presume there is some relationship between that and matters of fire. Would the minister give some assurance regarding protection for hotels in Ontario? We have seen the results in Las Vegas where, supposedly, the hotel was inspected sometimes and sometimes it was not. Some statements said it was built to certain standards and others said it was not. What assurance do we have in Ontario that we are not liable to have something of a similar nature? Could the minister say what efforts are being carried on by the fire marshal's office to prevent those types of occurrences?

I am sure if we asked this question regarding protection of nursing homes about a year or a year and a half ago, we would probably had the reply that everything was fine, yet we had a rather serious fire for which one really could not blame anybody. The point is that the danger exists. I am sure you agree that your function is to lessen the possibility of what happened in Las Vegas happening here. What are you doing in terms of the hotels in Ontario?

12:20 p.m.

**Hon. Mr. McMurtry:** We have had enabling legislation before the House in relation to our new fire code. A new fire code has been submitted by a committee that has been working on it for a long time. We would like to see this legislation passed as soon as possible. While the existing building code does contain a number of requirements and standards related to fire safety and while the fire marshal does have the authority to

require changes, as I understand his authority under the Fire Marshals Act, we believe it is in the interest of the public of Ontario to have a separate fire code. We hope that will happen in the very near future.

**Mr. Makarchuk:** Until such time as you draw up a very comprehensive safety code in Ontario, could we have some assurance there is some interim inspection or request that some action be taken on this matter? Am I correct in understanding that the matter of fire safety in hotels is in your hands? The Liquor Licence Board of Ontario does not have any jurisdiction over it at this time? Has it been consolidated with the fire marshal's office or is that still a shared interest or responsibility?

**Hon. Mr. McMurtry:** Yes, it is a shared interest. I gather the Hotel Fire Safety Act of 1971 has been assigned to the Ministry of the Solicitor General for administration. It deals with the fire safety requirements in new and existing hotels. Under that act, liquor licence board inspectors are responsible for ensuring that the hotels under their jurisdiction comply. I gather a number of these inspectors have been transferred to the office of the fire marshal in order to enhance their skills with respect to inspecting and enforcing the act. As you know, hotels are licensed by the Ministry of Consumer and Commercial Relations.

**Mr. Makarchuk:** In effect, what you are saying is that at this time there is rather a diffuse regulation or a diffuse supervision in existence.

**Hon. Mr. McMurtry:** No, I am not saying that at all.

**Mr. Makarchuk:** Who does have the responsibility for fire safety in hotels?

**Hon. Mr. McMurtry:** As I understand it, hotels with licensed premises are inspected by inspectors from the Liquor Licence Board of Ontario who work very closely with the fire marshal's office and receive training from the fire marshal's office.

**Mr. Makarchuk:** Does that not concern you? I would assume their inspection would

be in and about the premises where liquor is served, such as exits, sprinkler systems and the facilities available for people to evacuate the place. As you know, the fire that burned down the hotel in Las Vegas did not start in a liquor outlet, but in a kitchen outlet. Because of construction faults and various other problems, such as lack of sprinklers or inadequate supporting devices, it became very serious.

What assurance do we have in Ontario? I do not want to be an alarmist, but I feel some preventive measure at this time may possibly prevent a similar situation from happening somewhere down the road. Are you convinced or persuaded that we are not going to have a problem in hotels similar to what happened there? I am not sure of the details, but the air conditioning system sucked up smoke into the top storeys; there were pathways for the smoke to go into other areas of the hotel; the fire doors were of such a nature that they had to be jammed open in order to be usable; and the fire tunnels or escape routes became unusable for people. Do we have any assurance this could not happen here in Ontario?

**Hon. Mr. McMurtry:** The inspectors who have the responsibility for fire safety in these inspections, as I understand it, involve the whole hotel. They are certainly not restricted just to those portions of the hotel that are occupied in relation to the liquor licences. They have the responsibility for the inspection of the total structure of the hotel. Obviously, one would be very foolhardy to say there are any guarantees that this cannot happen in Ontario. One could also express a view about the resources we have with respect to inspecting premises in relation to fire safety. Personally, I believe the available resources should be increased.

**Mr. Makarchuk:** Meaning no reflection on the fire inspectors from the Liquor Licence Board of Ontario, what is their level of expertise? It seems to me that the fire expertise is in the fire marshal's office, or I assume it is there. Are these people adequately trained and do they have the expert or the technical knowledge to ensure that the precautions which can be taken are taken, or that the various technical or construction changes, et cetera, that can be made are being made to prevent a conflagration? Can you say that this is going on at this time?

**Hon. Mr. McMurtry:** I repeat what I said about the training done by the fire marshal's office. We have the fire marshal,

Mr. Bateman, here. I do not know whether he would like to add anything in detail.

**Mr. Bateman:** Just to expand a little bit on what the minister said, the largest area of responsibility that the liquor licence board inspectors have is fire safety. They are involved in other areas with respect to the licensing facilities, but it is mainly in fire safety. A number of their inspectors have attended our courses at the Ontario Fire College at Gravenhurst. All of them have received training either under our direct supervision through direct programs put on by us—we have one coming up in January for all their staff—or through their own in-house programs as well. I would say that their level of expertise is good, if I may put it that way.

**Mr. Makarchuk:** How many inspectors have you trained in the last year or the last couple of years? How many have attended the courses? Did you say all of them have or some of them have? Is it 50, 25 or 75 per cent of the inspectors on the liquor board?

**Mr. Bateman:** I honestly don't know about the last year; I cannot tell you. In the last five years, I would say 100 per cent have had this training.

**Mr. Makarchuk:** Who has the final responsibility in Ontario in matters of fires? In other words, do you have a shared jurisdiction, that is, your jurisdiction applies to anything but hotel fires, while they are responsible for the safety and all the construction details, sprinklers, fire alarm systems, et cetera? Is this the responsibility of the inspectors from the liquor board, is it your responsibility, or do you have a shared responsibility?

**Mr. Bateman:** The legislation is our responsibility certainly, but they have the responsibility for inspection and enforcement. They work very closely with us, liaising with us to ensure that we are thinking the same way. We have the responsibility for the dry hotels. Our own office inspects them.

**Mr. Makarchuk:** You must be going out of work on that.

**Mr. Bateman:** These tend not to be the MGM Grand-type of hotels but smaller motels.

**Mr. Makarchuk:** I wonder if we might get back to the minister. Does the minister feel that perhaps there should be some consolidation of the service, or is he happy with the present, shall we say, semi-chaotic state?

**Hon. Mr. McMurtry:** I am sorry? I missed that.

**Mr. Makarchuk:** Are you happy? Do you feel there should be some consolidation, that somebody should be totally responsible for

fire prevention in Ontario, or do you feel that the shared responsibility which you have right now is adequate?

12:30 p.m.

**Hon. Mr. McMurtry:** I do not pretend to have all of the information that perhaps one should have to make a value judgement on it. The shared responsibility seems to be working reasonably well, but I think a strong argument can be made for greater consolidation than what exists at the present time. I am quite aware of the arguments and the legitimacy of the arguments that can be made in that direction.

**Mr. Makarchuk:** I have one more point. Is the minister aware of the fact that in case we do have a major fire, there is not a burn unit available in Toronto for treatment of these people? In other words, if something like the Mississauga derailment caused burns to a number of people, a great number of people, probably 20, 30, 40, something like that, are you aware that there are not the facilities in Toronto to treat these people?

**Hon. Mr. McMurtry:** That is not accurate. There are many first-rate hospitals in the Metropolitan Toronto area that obviously have a great deal of expertise when it comes to training or providing that type of medical assistance. So I cannot agree with your statement. On the other hand, we have recommended to the Ministry of Health that one hospital develop a burn centre. Notwithstanding the fact that most of the major hospitals feel they can handle these problems, we do recognize that it would be a wise allocation of medical resources to develop a burn centre in one of the hospitals which would have a high degree of specialization in this area. I think it is the Wellesley Hospital that we have suggested to the Ministry of Health. This is a matter I have discussed with the firefighters' association and the fire chiefs' association, and I personally strongly support the recommendation.

**Mr. Makarchuk:** I want to stress that. Sure, the expertise is available, but if you talk to members of the medical profession—and you don't have to go very far, just down the road—they will tell you that if there is a major fire in Toronto with a lot of casualties, there are not the facilities to treat them right now. I was surprised to find out that was the situation right here. That was something that was brought to my attention after the Mississauga derailment. Instead of just sending some casual comments or suggestions to the Ministry of Health, I think you had better look at it very closely. We do not have the beds and the equipment right now with

which to treat adequately or properly fire burn cases in Toronto or in this area.

**Hon. Mr. McMurtry:** I think we have to look at it in perspective. We support the establishment of a burn centre to encourage the development and enhancement of expertise in that area, as well as the availability of a specialized centre for major victims. We certainly support that recommendation. But when you talk about a major catastrophe, if there were a major catastrophe, even if we had a burn centre at Wellesley Hospital, the physical limitations of any hospital would enable us to treat only a certain number of victims. We would have to rely on other hospital resources. No hospital, regardless of how large it is, is ever going to be able to handle a major disaster by itself.

**Mr. Makarchuk:** That is not the point. Even if you had some facilities, you would not be able to handle a major disaster. But I think that in this day and age, in which the possibility of fire burns is greater than it used to be, you should look at it very seriously. I quite agree that you cannot provide for everything. The point is that if you have some facilities, you can provide for some of the more serious cases while the others are taken care of somewhere else. Possibly, these others could be taken care of, but there are certain fire burn cases that cannot be taken care of unless you have the special beds and equipment.

**Hon. Mr. McMurtry:** I would simply say I agree with you with respect to the establishment of a burn centre. We have recommended that to the Ministry of Health.

**Mrs. Campbell:** Mr. Chairman, I would like to talk about large buildings, quite apart from hotel situations. You have mentioned the lack of consolidation in that one field. What is the role of the fire chiefs across the province in their requirements to revive any new building plans, having in mind fire standards? Are those chiefs also trained by the fire marshal? I am saying this because in Toronto, for example, where there are any new building grants—and this was certainly true from the 1960s on, though I don't know how far back of that it goes—every plan has to be submitted to the fire chief as well as to others to review the fire requirements. Is that general practice in this province? What is the role of the fire chiefs under the new code, if, as and when, and how are they trained to carry out that function?

**Hon. Mr. McMurtry:** Mr. Bateman, can you answer?

**Mrs. Campbell:** The minister can answer.



**Hon. Mr. McMurtry:** I thought you might have the best source of detailed information from our provincial fire marshal.

**Mr. Bateman:** Thank you, Mr. Minister.

**Mrs. Campbell:** A vote of confidence on that.

**Mr. Bateman:** We will see after I try to answer your question, Mrs. Campbell. Toronto is a good example of how co-operation works between the fire department and the building department. A plan of any new building requiring a building permit is submitted to the fire department for its comments. They are particularly interested in large buildings where firefighting might be a problem. This is not necessarily true of every municipality, although in practice it is true of the major municipalities. Indeed, in a few smaller ones, the fire chief and the building official are one and the same.

It hasn't been a problem. The fire chiefs did express some concern at the time the Ontario Building Code was being discussed as to whether they should have a mandatory role written into the legislation or whether it should be left to the municipality. It was that latter option that prevailed.

**Mrs. Campbell:** I was aware of their concerns at that time.

**Mr. Bateman:** Since then, I have not had any complaints from fire chiefs about being ignored or left out by building officials. All they have to do is express their concern and there is no way they can be ignored.

If I may touch on your other question as to the training they receive, almost all fire chiefs—certainly all the chiefs of full-time and composite fire departments in Ontario—have been through the Ontario Fire College. They do receive extensive training there in the building code, and particularly since the late 1960s there has been emphasis on the special requirements for high-rise buildings. I think I can say without fear of misleading anybody they have all received a good standard of training in reviewing plans for new buildings.

**Mrs. Campbell:** Does the fire chief in Toronto have any jurisdiction in arrangements for new hotels? I thought he did. Does that conflict with your people or anybody else?

**Mr. Bateman:** No, it does not. We still have a Hotel Fire Safety Act and regulations that cover a certain amount of the same ground as the Ontario Building Code, but there is no real conflict. As far as the fire department is concerned, there is no conflict there at all.

12:40 p.m.

**Mrs. Campbell:** Who does the hotel inspections for this purpose in Toronto, beginning with plan inspections?

**Mr. Bateman:** The fire department conducts inspections. In Toronto, they very clearly prescribe the areas of concern of the fire department—sprinkler systems, standpipe systems, alarm systems and any other fire protection equipment such as outfit lights. But other areas, such as fire resistance of fire walls, fire doors and exit facilities, are building department responsibilities.

That is very clear in Toronto and a model to some other municipalities. The fire department does inspect buildings, as indeed the building department does.

**Mrs. Campbell:** I am aware of that. Tell me about the difference between your jurisdiction and the other jurisdiction, the provincial jurisdiction and the municipal jurisdiction. Do they take over? Are they really your agents or the agents of this government in the inspections in Toronto?

**Mr. Bateman:** Yes, the Liquor Licence Board of Ontario inspectors are.

**Mrs. Campbell:** Do the liquor licence board inspectors review plans?

**Mr. Bateman:** Yes.

**Mrs. Campbell:** You have not found any conflict, I take it, between fire department approvals and the review by liquor licensing inspectors.

**Mr. Bateman:** No, there is no conflict. There are sometimes some weird complications that evolve out of the different types of licensed premises, where adjacent rooms with different licences are not supposed to have exits through each other.

**Mrs. Campbell:** Who monitors that?

**Mr. Bateman:** They arise out of the Liquor Licence Act itself.

**Mrs. Campbell:** Perhaps it also needs review. When you say 100 per cent of them have been through this course, what is 100 per cent in manpower, in persons?

**Mr. Bateman:** I believe roughly 115 to 120 inspectors with the liquor licence board.

**Mrs. Campbell:** What co-operation is given to the local fire departments by your department over their concerns about high-rise buildings, stands and all the rest of the things that bother me?

**Mr. Bateman:** We don't have a large field staff, so most of it is confined to the written word and telephone conversations if the local fire chief or fire inspection bureau has a



problem. But if it is serious, we do try to get one of our engineers out in the field to help them with whatever the problems may be.

**Mrs. Campbell:** Prior to the code, have you developed any new standards in the last 20 years for high-rise buildings? They were just wrestling with it in the 1960s.

**Mr. Bateman:** I don't think we would like to say we have taken any credit. We have had some input in both the Ontario Building Code and various versions of the National Building Code, which is sort of the mother document of the Ontario code. Our staff has been on the committees that prepare these codes. We felt that these uniform codes are the route to go rather than our imposing unilateral requirements. We think they are excellent codes and the best on the continent.

**Mrs. Campbell:** Are you content with the definitions in the use of plastic materials?

**Mr. Bateman:** With the extent to which plastic is permitted in buildings? I would not use the term "content." I am happy with the record we have had in Ontario to date with fires involving plastics, amongst other flammable materials, but I would not say there is no room for refining the codes to further delineate how plastic could be more safely used.

**Mrs. Campbell:** The kind of plastics is the other concern.

**Mr. Bateman:** That is right.

**Mrs. Campbell:** It does not seem to me that we have really come to grips with any kind of definition.

**Mr. Bateman:** Really there are two basic areas of concern. There are the plastics built into the building structure before anybody moves in which are fairly well-protected from fire. Then there are the plastics found in the furnishings themselves that are somewhat harder to legislate.

**Mrs. Campbell:** I was speaking of the building-type plastic use.

**Mr. Makarchuk:** By way of supplementary, does the ministry or the fire marshal's office do anything in terms of suggesting to manufacturers the types of plastics they should use, in view of the possible potential danger of noxious fumes that may come out of the plastics as a result of fires? Do you make any recommendations or do you do any analysis of some of the types of construction of the plastics that go into furniture or, for that matter, clothing, et cetera?

**Mr. Bateman:** We do make suggestions as to the type of plastic used in certain types of buildings where we have, I suppose, a historic mandate, such as schools and hospitals, where they may want to use plastic glazing, plastic skylights and so on. Some types of plastics are worse than others. They burn with more ferocity and have a higher toxic content. They stay in place longer. Some plastics have the rather favourable feature of dropping out once they heat up; then they fall to the floor where they are less apt to ignite.

As for the second part of your question about the way plastics behave in furniture and furnishings, that is an extremely complex subject. Other than urging the hazardous products branch of the federal Ministry of Consumer and Corporate Affairs to pursue the enactment of regulations on that—and they have been working on that for some years—it is very difficult. I do not know of any other jurisdiction in the world that has a sensible standard on a safe type of behaviour for furniture to meet in fire conditions. It depends so much on the type of covering of the material, the foam material and the configuration of the furniture. It is very difficult to get a fair standard that will realistically compare one type of product with another.

At the last meeting of the Association of Canadian Fire Marshals and Fire Commissioners, the representatives of the federal government were there and promised to bring in standards as quickly as they could. They now have one on mattresses.

**Mrs. Campbell:** I was concerned in asking the question because it arose in the 1960s. The city of Ottawa had no ban on plastics. Toronto had an absolute ban on plastics, and we saw development of what were known as Florida rooms—I think that is what they were called—that had ceilings of plastic. It was at that time that we wrestled with a definition, because it seemed from any tests made that the plastic used in that kind of context was reasonably safe. I am wondering if there is a developing use of plastics in buildings in other areas today or whether it is diminished. What is happening?

12:50 p.m.

**Mr. Bateman:** I would have to say it is diminishing, if anything.

**Mrs. Campbell:** Good.

**Mr. Bateman:** Some of the early tests in the 1960s came up with rather misleading results, like the material used in the Florida rooms. They would come up with a number that indicated a low flammability, which was

not true in reality; it was just a flaw in the test procedure which was designed to test plywood rather than plastic.

Mrs. Campbell: Great. We certainly were sophisticated, weren't we? What about other types of fires other than in buildings? Does this come under this code?

Mr. Bateman: The fire code?

Mrs. Campbell: I am talking about forest fires, for instance, which are very much a matter of concern. I wonder if the minister has anything to say to this committee about the ongoing problems resulting from a major forest fire in this province, the subsequent inquest and the rest of it. Will we be brought up to date on where we stand?

Hon. Mr. McMurtry: With respect to the inquest into the Nakina fire, as you may have noted, I was discussing with my officials some of the issues related to it.

Mrs. Campbell: I thought you were being interviewed on the subject. I thought if you were giving information to the press, you might bring the committee up to date.

Hon. Mr. McMurtry: A very observant press was watching us and listening to us discuss the issues.

Mrs. Campbell: I was not listening.

Hon. Mr. McMurtry: I have no secrets from you, Mrs. Campbell, that I am aware of.

Mr. Hilton: Wait a minute.

Mrs. Campbell: You just delay your answers.

Hon. Mr. McMurtry: The deputy may have, but that is his problem.

Mr. Hilton: As your counsel, I advise you—

Hon. Mr. McMurtry: The issue we have to face up to is what is going to happen to that inquest, as you well know. Under the Coroners Act, as you also appreciate, once the presiding coroner is formally advised of the criminal charges, as I understand the legislation, he has no alternative option or discretion other than to terminate the inquest and discharge the jury.

I am advised that the inquest was very close to its conclusion and that there is very little evidence still to be introduced. The two gentlemen who have been charged with criminal negligence have both given evidence—the Deputy Solicitor General says twice. So some of the overriding concerns about an inquest involving people who are going to appear before the courts are not as relevant as they might be because these people have already given evidence.

In my view, we have to balance the public interest in concluding that inquest, considering the fact that the jury has sat for 56 or 57 days with a lot of delays. We must balance the considerable public interest with the rights of the accused who are before the court. Not only will we want to avoid any prejudice to them in so far as a fair and impartial trial is concerned, but I know you and I have always agreed it is just as important to avoid the impression or perception of any prejudice.

This is the problem I am wrestling with at the moment. I hope we will have some decision within the next 24 hours as to whether I will request that the inquest proceed.

Mrs. Campbell: Have you compared the English legislation in this field with ours? I was struck by a press story just recently. They seem to have a greater power, not just the power to recommend but the power to go far beyond what ours can do. Is that true? Am I misunderstanding the scope of the legislation in Britain compared with ours?

Hon. Mr. McMurtry: I cannot answer that. I have not seen that legislation.

Mrs. Campbell: I have not either. I just assumed we probably copied, in large part anyway, what they have.

Hon. Mr. McMurtry: The language of our legislation is quite precise in that respect, as you know.

Mrs. Campbell: That is right. The story seemed to indicate that they had the power themselves to charge, which is strange. It could be that the story was faulty.

Hon. Mr. McMurtry: As you know, the situation in Quebec's coroners system is quite different too. I think they are able to recommend charges or certainly to make findings of criminality. It is clear by our legislation that our coroners' juries are precluded from making any such findings.

Mrs. Campbell: Do we have an answer?

Mr. Hilton: The coroner says he cannot be absolutely sure of the matter, but his opinion is that the British legislation is the same as ours. It recommends.

Mrs. Campbell: I will have to chase down that story and bring it in.

Mr. Hilton: You cannot say charges. You can say it makes recommendations "in relation to".

Mrs. Campbell: Is it perhaps more like the Quebec legislation than like ours?

**Mr. Hilton:** More like ours.

**Hon. Mr. McMurtry:** You just said they could make recommendations. I think Mrs. Campbell and I both interpreted that to mean recommendations with respect to the laying of criminal charges.

**Mr. Hilton:** No, that is not so—just recommendations.

**Mr. Makarchuk:** Mr. Chairman, I would like to discuss the police commission. It is in this vote but we don't have the time.

**Hon. Mr. McMurtry:** I don't think it is in this vote.

**Mr. Makarchuk:** Police training and operation of police colleges.

**Mr. Chairman:** That is in vote 1703.

Vote 1702 agreed to.

**Mrs. Campbell:** Mr. Chairman, it seems to me we are going to have to get the House leaders into the act to try to see how we can complete these estimates. I suggested at the beginning of the meeting that we may need to ask them to be prepared to sit for an extra week at least. With this delay today and with what is on our platter, it is ridiculous.

**Mr. Chairman:** If I recall the decision of the committee on an agenda which was passed, we agreed to complete these estimates by next Wednesday, did we not? I do not have the schedule in front of me. When the committee dealt with that matter, both of the critics were in attendance. I can only assume that if the critics are willing to cut short the estimates in light of other activities of the committee, we should accept that.

The committee adjourned at 1 p.m.

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**From the Ministry of the Solicitor General:**

Bateman, J., Fire Marshal

Hilton, J. D., Deputy Minister









No. J-30

# Legislature of Ontario Debates

## Official Report (Hansard)

**Standing Committee on Administration of Justice**  
Estimates, Ministry of the Solicitor General



**Fourth Session, 31st Parliament**  
Wednesday, December 3, 1980

Speaker: Honourable John E. Stokes  
Clerk: Roderick Lewis, QC

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# LEGISLATURE OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

WEDNESDAY, DECEMBER 3, 1980

The committee met at 2:15 p.m. in committee room No. 2.

After other business:

### ESTIMATES, MINISTRY OF THE SOLICITOR GENERAL (concluded)

On vote 1703, supervision of police forces program:  
2:30 p.m.

**Mr. Makarchuk:** I want to raise the matter of the Ontario Police Commission. One of the concerns that prevails in some municipalities, particularly my own, is the matter of the expertise of the commission or how knowledgeable the commission is. In view of the fact that the Ontario Police Commission will probably be invited by the local police commission to deal with matters relating to the operation of the local police department, the Ontario Police Commission makes a report and then it lies dormant or hidden for a period of time. Eventually the report gets out or is released and then a great big public hassle goes on between the Ontario Police Commission and the local police commission as to who is right.

As an example, this is from the Brantford Expositor,

"The OPC reports the city has too many policemen." The rebuttal is, "Chief claims report faulty." I think there is another item on the statement by Judge E. O. Fanjoy. He says, "The report on city police borders on the ridiculous."

I am not critical of the Ontario Police Commission nor of the local police commission, but a lot of citizens in the community—not only mine, but other communities—would like to know who is telling the truth about this. Who has the expertise and how credible are some of these studies and reports being done by the OPC? Do you have the confidence when the OPC comes into a community and does a study that they take into account all the matters that are disputed later on? What type of dialogue do you have with the local police chief? Do you discuss it on an item-by-item basis? Who do we trust in this particular situation?

How do we resolve this problem where, on the one hand, we have a report from the OPC—and I am not quibbling with the validity or quality of the report, this is not the case here. Somewhere we have this kind of operation going on in various communities and we do not know exactly who is right and who is wrong. How do we sort it out, as concerned taxpayers in the city of Brantford?

**Hon. Mr. McMurtry:** First of all, I am not familiar with the issue or the controversy in relation to the OPC and the Brantford police department. I regard both organizations as highly credible ones. These issues are usually resolved without any controversy between the OPC and the particular police department involved. There is no question the OPC has a considerable degree of expertise within its ranks that is used on a day-to-day basis to assist individual police departments to enhance their ability, generally, with respect to policing in Ontario.

Obviously, in human affairs, there are bound to be disagreements from time to time between the OPC, individual police departments and police governing authorities. The OPC has been given a mandate by this Legislature to generally supervise and, where possible, to enhance the quality of policing in the province.

In so far as the issue to which you direct my attention is concerned, it is unfortunate if there appears to be some controversy between the OPC and the local police department. Both have the same goal, and that is better policing in the province of Ontario.

We have the chairman of the Ontario Police Commission with us, Mr. Shaun MacGrath, who undoubtedly is familiar with the matter you have raised, and perhaps he would like to address some comments with respect to those matters.

**Mr. MacGrath:** I would appreciate that, Mr. Chairman.

The Brantford report was one of 20 commenced and completed in 1976. At the request of the Brantford board of police commissioners, we supplied them with a report.

We were also asked to go back after a period of two years. We went back in 1979. The chief at first agreed with the 1976 report, but he did not agree with our findings in 1979 and, as you would agree, that is the chief's prerogative.

In so far as the nonrelease of the report is concerned, when a municipality requests the OPC to go in to do a study it is done on the condition that it is the property of the local board of police commissioners. It is up to them to release it, not the OPC.

**Mr. Makarchuk:** That is not a point I am arguing about or quibbling with at this time, whether it is released or not. I can understand that in certain situations there may be a reason for keeping something confidential, though I do not lean in that direction too much, either. That is not the point here.

My concern is that you have done a study, I imagine with a great deal of expertise, with competent people involved and you have come in with certain recommendations that you assume to be valid. On the other hand, we have the chief of police and a member of the police commission saying, in effect, that what you guys said is a crock, or something to that effect. Not in those words, but implying it. Who am I supposed to believe?

**Mr. MacGrath:** Two of our senior advisers completed a study in 1976. One of the same two advisers and two additional senior advisers were on the 1979 study. The one bone of contention for the local police authority and the chief—who were of the same opinion that they disagreed with us after our findings had been presented to them—concerned their special traffic enforcement unit. It was made up of one sergeant and nine constables.

All the material contained in our reports consists of material supplied to us by the Brantford police force. According to the material contained in the report, the one area about which there was a lot of contention was that the total calls for traffic services by those 10 personnel amounted to 7.3 calls per day, which equals 1.2 service calls per officer. This was one area of contention when we presented the report to the local board of police commissioners.

**Mr. Makarchuk:** In your mind, what you did is a pretty comprehensive analysis and you stand behind the report.

**Mr. MacGrath:** Very much so. The first study lasted three months and the second lasted six weeks.

**Mr. Makarchuk:** Are you of the opinion that there is room for improvement, particularly in the allocation of manpower or how it is used in the Brantford situation?

**Mr. MacGrath:** Very much so.

**Mr. Makarchuk:** One of the arguments the chief advances is the fact that you did not take into account the time spent by police in court. This is a problem other municipalities have raised, that a lot of their time is spent working in the court and therefore they are not able to carry out what are considered to be their normal duties. Was this taken into account in the Brantford analysis?

**Mr. MacGrath:** As far as I am aware, it was taken into account in the 1976 report and also in the review of the original study in 1979. When we go in, we look at one complete month of operation, what we refer to as the 28-day cycle standard. Those cards are supplied to us by the force and they are studied both in Brantford and in our own offices.

The gentleman who was involved in both studies, Mr. Fairweather, is with me here today. He was directly involved in the time allocations, the duty shifts and the rosters. The suggestions contained in both reports for the better deployment of all personnel on the force were drawn up by him in consultation with two other senior advisers, both of whom were formerly deputy chiefs in major municipal forces in the province.

2:40 p.m.

**Mr. Makarchuk:** I presume that when you do these studies—I suppose it goes without question—you do compare the operation of one police force to the operation of similar police forces in other cities.

**Mr. MacGrath:** Oh, very much so, sir.

**Mr. Makarchuk:** These factors are taken into account when you make your decisions or reports?

**Mr. MacGrath:** Yes.

**Mr. Makarchuk:** That is all I have on that.

**Mr. Chairman:** Are there any further comments on that particular issue?

**Mr. Kerrio:** Yes, I have some on that particular issue, on item 1. I raised the question in my general comments about a police commission study recommending the hiring of civilians for the Niagara regional police force. That study that was commissioned by the commission itself is fine in the context in which the study is carried out. I am interested to know whether anything has been done about that study. I am most anxious to know about the reaction of the force itself. It is one thing for a commission to have a study and to make recommendations, but it is another thing to put them in place. Do you have a feeling about the reaction of the

general executive branch of the Ontario police force to that study, and what their feeling is about hiring civilians to free officers to do more in the way of police work?

**Hon. Mr. McMurtry:** Do you mean police forces generally in Ontario?

**Mr. Kerrio:** Yes. Have you had a feeling on that?

**Hon. Mr. McMurtry:** Yes, we touched on this earlier in the estimates. Obviously, with the high cost of policing today, the rate of salaries paid to first-class constables dictates a need to use civilians wherever appropriate, or wherever it is not necessary to have a fully trained police officer. For example, in so far as the Ontario Provincial Police are concerned, they have quite a high ratio of civilians working in the department. This varies from department to department. All forces are faced with the same economic restraints, and governing authorities obviously want to keep their police budgets under some sort of control. So there is a very obvious financial motivation to use civilians where appropriate.

I would also mention the fact that in some forces police officers, for health reasons or matters often beyond their own personal control, find themselves in the position that, while they do not want to retire, they may have doctor's orders to be placed on lighter duty. There is bound to be a certain number of police officers on any large force who have been assigned to lighter duty for very humane reasons. Generally speaking, I think the idea of integrating civilian employees has long been accepted.

**Mr. Kerrio:** You feel, then, it has been accepted, and it has gone into place rather smoothly?

**Hon. Mr. McMurtry:** Yes, as a general proposition.

**Mr. Kerrio:** That is an important issue. The commission recommended in the Niagara study that this be done. Do you know if that has been expanded across the province to a greater degree?

**Hon. Mr. McMurtry:** I know all police forces are utilizing civilian employees to a greater extent than ever before. Perhaps the chairman might want to address that question again, because it is a subject that the Ontario Police Commission does monitor.

**Mr. MacGrath:** First of all, Mr. Chairman, the degree of civilianization recommended for the Niagara regional force has been adopted. We have the co-operation of all concerned, the police association and the governing authority as well.

In so far as civilianization across the province goes, if I may read briefly from these figures, we have promoted the greater use of civilians in municipal forces for economic and operational benefits. The percentage of civilians employed in the police force complement in 1972 was 15.3 per cent. In 1979, it was 22 per cent. In our studies, and in our mandatory visits to all forces once a year, we do reinforce that there is a value to be derived from civilianization in that it does help to free uniformed personnel for greater law enforcement.

**Mr. Kerrio:** Then of course you realize the concern I had about integrating. It is one thing to have a study and to make recommendations, but how to put it into place, to get the officers and the executive branch of any police force to accept it in a way that makes it efficient, is one of the questions I would like you to answer.

**Mr. MacGrath:** I might add that the way it was accepted in the Niagara region was first class, in our opinion.

**Mr. Kerrio:** It is very important. Thank you.

**Mr. Renwick:** Mr. Chairman, I have two brief matters that I would like to raise with the Solicitor General. One is related to the Ku Klux Klan. The other is related to the ugly overtones in the attack on the gay community in the municipal elections which ended in November.

I do not intend to repeat myself, because I did have the opportunity of appearing before the standing committee on social development on Tuesday, November 25, at the time when the Ontario Human Rights Commission was present at the estimates of the Minister of Labour (Mr. Elgie). I also had the opportunity of mentioning to the Deputy Solicitor General (Mr. Hilton) that I had spoken. Therefore, I do not intend to repeat my comments, but anyone interested can read them.

**Hon. Mr. McMurtry:** I read your comments, Mr. Renwick.

**Mr. Renwick:** I made two or three suggestions in that context to the members of the Human Rights Commission who were in front of us at that time.

I wanted specifically, and in a very limited way, to deal with about three aspects or considerations related to this literature. First of all, I would like to know whether the Solicitor General has seen this document, League Against Homosexuals, which is apparently a registered, nonprofit organization. The document has four names and a post



office box number attached to it. I am not an expert on the question of hate literature, but if this is not hate literature then I hardly know what would come under that definition within the code. I would ask if that could be remarked on.

**Hon. Mr. McMurtry:** I am not sure whether I have seen this but, as I recall, there is a difficulty with the code because identifiable groups are defined under it. Homosexuals do not fall within the definition of identifiable groups under the Criminal Code. I think there is a problem under the code itself with respect to this literature which would normally be characterized as hate literature. I have not seen this, to my knowledge.

**Mr. Renwick:** In any event, I do not want to delay the work of the committee now, but I wonder whether you would, at some time—

**Hon. Mr. McMurtry:** I am sorry, I should correct myself. I may have seen it. I do recall a piece of literature that did make a reference similar to this: namely, an allegation that "Mr. Roy McMurtry refuses to publicly outlaw queers from joining our Toronto police, and has just helped to drop height and weight restrictions from our police recruiting criteria." I did see that statement in a piece of literature. It may have been this.

**Mr. Renwick:** It may have been that one.

**Hon. Mr. McMurtry:** Yes.

**Mr. Renwick:** In any event, I would at some point like the view of the Solicitor General about what is done when that kind of literature is circulated. What is the police role with respect to that kind of literature? Is it collected? Is it a matter for examination? Is it referred in any way to the crown law officers for consideration as falling within any breach of the code? In other words, at some point, either by letter or by a statement which could be circulated to the members of the committee, would you tell us just what is the process when that kind of literature appears on the streets in a city such as Toronto?

2:50 p.m.

**Hon. Mr. McMurtry:** I know I have asked and I will be prepared to follow that up. The police have been dealing with this as literature, to my knowledge, that might well fall within the hate propaganda provisions of the Criminal Code. I have written some letters in the past couple of weeks to people who have expressed similar concerns, pointing out that the homosexual community does not fall within the definition of identifiable groups under the Criminal Code. I do not

have a copy of the Criminal Code with me, but I think that has presented a problem.

**Mr. Renwick:** That may be the flaw that is involved in it, because within any definition of hate literature, while the group may not be one of the ones encompassed in the code, nevertheless that appears to me to be hate literature directed at an identifiable group in the community.

**Hon. Mr. McMurtry:** I will clarify that for you, Mr. Renwick, but my recollection is that it may qualify as hate literature in general terms, but unless the identifiable group is defined in that same section, then the prosecution cannot succeed.

**Mr. Renwick:** I recognize the distinction and I appreciate it.

**Hon. Mr. McMurtry:** It may be for the same reason.

**Mr. Renwick:** I am certain you are quite right. I am just a little concerned that in our society that kind of literature can circulate and there is no evident way in which, either under those special sections of the code or perhaps elsewhere, that kind of literature may be subject to some form of public disapproval through the code.

**Hon. Mr. McMurtry:** I think this is something that perhaps should be pursued. This type of hate literature, to my knowledge, is a relatively recent phenomenon in Ontario, and it may be that the federal parliamentarians will have to address that issue with respect to a possible amendment to the Criminal Code.

**Mr. Renwick:** The second piece relates to the Ku Klux Klan. I am sure the minister has seen this. It was on a sort of an orange cover, but in any event I would appreciate if that could be examined, from the viewpoint of the comments which it makes about something which they designate as the "blacks," in relation to the hate literature provisions of the code. Perhaps that does not fall into the same problem.

**Hon. Mr. McMurtry:** I am sure I have seen this literature. We have obtained literature which has been distributed and this may very well be the piece of literature—I would have to look at it more closely—which, in our view, does offend or breach the hate propaganda sections of the Criminal Code. The police have been investigating to determine which individuals they can establish in evidence are responsible for distributing it. Obviously, it is literature that is attributable to the Ku Klux Klan, and one can make an assumption that it has perhaps been distributed by the group calling itself



by that name and attempting to organize in Ontario. The police have not yet been able to identify any specific individuals who have been responsible for distributing this material.

**Mr. Renwick:** The one which I received had attached to it a card of Armand Sikna who ran as a mayoralty candidate, and I am certain the Solicitor General has probably seen that.

The other matter I have asked him to consider in relation to this whole question is that they have a law in New York. I am certain it must be a law of the state of New York rather than a federal law. You may have noticed in magazines, periodicals or literature which is published under the name of any organization, that once a year they must file a statement and publish it in their literature setting out the name of the organization, its background, where its finances come from, who its principal backers are and who its officers and directors are, all in summary form. At least once a year you can have a sense of who is the special interest group that is behind any particular periodical or journal of opinion or of any other kind.

I wonder whether it would be possible for you to inquire of New York state as to what that law is? I had hoped to do so and I had hoped to have an example of it with me, but I could not find one when I was looking for it. It does seem to me this spate of literature is mainly put out under the protection of registered, charitable, so-called nonprofitable organizations, which is the case of that League Against Homosexuals and a couple of others. Usually there is just a post office box address and often it is without the benefit of any particular names which may be shown on it—although in that particular case there are some names—and I think that law would be a matter of information to the public.

I recognize it can cover only periodical types of literature and it cannot cover every flyer that appears on the streets under whatever guise. It does seem to me that with a little ingenuity registered charitable nonprofit organizations in the province could be required to file annually a list of the publications they publish, and then to publish in one of their periodicals or any of the literature, at least once a year for general distribution, particulars of who is behind the organization, where the money comes from and the names of the people who are responsible to it.

I recognize I am reaching, but I was very concerned, as I hope many people in the city are, about the appearance of this particularly ugly form of literature at a time when the municipal election campaign was taking place.

**Hon. Mr. McMurtry:** I will certainly obtain particulars of that New York legislation and share the information with you when we have obtained it.

**Mr. Makarchuk:** On that point, I think the legislation my colleague refers to is national legislation and I think it was invoked in the United States during the McCarthy period for purposes of identifying the various publications to see how far left of centre they were originating, and it actually has become part and parcel of the American way of life. I still think it does certainly have benefits to identify the people who put out some of the scurrilous information.

**Mr. Chairman:** Mrs. Campbell, your questions were on item 2, I gather.

**Mrs. Campbell:** Yes.

**Mr. Chairman:** Mr. Lawlor, are your questions on item 1 or item 2?

**Mr. Lawlor:** My questions have to do with the Royal Canadian Mounted Police.

**Mr. Chairman:** That is in neither item 1 nor item 2, but if you can somehow relate it to the Ontario Police Commission—

**Mr. Lawlor:** Hold it now, Mr. Chairman.

**Hon. Mr. McMurtry:** It might be related to the Ontario Police Commission. In any event, I would be happy to entertain the question, but it is in your hands, Mr. Chairman.

**Mr. Chairman:** I will let Mrs. Campbell go ahead and then I will recognize Mr. Lawlor, in fairness of rotating among parties.

**Mrs. Campbell:** Mr. Chairman, I would like to add my voice to that of Mr. Renwick in this matter of hate literature. It seems to me Toronto does not need that kind of an atmosphere and everything should be done by the Attorney General of the province, as well as the Solicitor General, to try to ensure we are not spreading hate at a time when we can do without that sort of expression.

I was not intending to ask questions in so far as the Ontario Police College was concerned. I had taken it upon myself to address a question to the superintendent at our last meeting, but I would like to invite him to make a statement as to how that college has changed its training program and its curriculum as a result of my expressed concerns in the area of family violence. I

would just like that statement to be made and put into the record. I do not think it will take as long as my asking questions about it.

3 p.m.

**Mr. Philip:** Is that information available for Mrs. Campbell?

**Hon. Mr. McMurtry:** Yes, perhaps Mr. William Swanton, the director of the Ontario Police College, would like to address that directly.

**Mr. Swanton:** Mr. Chairman, we have recently inserted into the training program at the police college a combined package of training covering a full three days and embracing the whole area of multiculturalism and family-crisis intervention.

I think the area you are referring to is covered in our family-crisis intervention program, where we not only give academic instruction in the classroom but take our police officers under training into the practical exercise of role playing, in an effort to get them to understand the techniques—

**Mrs. Campbell:** I hope their wives are not involved in the role playing, sir.

**Mr. Swanton:** —of defusing very bad family situations. We generally refer to these things as domestic problems.

**Mrs. Campbell:** Yes. Before you addressed them as interpersonal relationships.

**Mr. Swanton:** Exactly.

**Mrs. Campbell:** It was that to which I took extreme exception, in view of the fact that you seemed to isolate that area from areas of criminal activity, as though we had the old British rule of thumb still prevailing in this province, as I think perhaps we did unconsciously. That was an aspect to which I took very serious objection, the whole matter of what kind of information is laid. All too often a common assault charge is laid when it is not appropriate and assault causing bodily injury would be more appropriate. All of these areas, in my opinion, need the protection of the police on them.

I am a little uneasy with your answer in that it seems to be that, even yet, we are dealing with this subject in a noncriminal fashion. While I recognize the difficulties of that, I am still concerned that there may be those, as a result of their training, who do not take these matters as seriously as perhaps they might.

**Mr. Swanton:** You may be right in some instances. Some individual police officers may not, but the training program we attempt to give them is as all encompassing as we can

possibly make it. Bear in mind the necessity for them to understand the whole concept of human relations.

Attending a family dispute or a domestic dispute, call it what you will, has proven to be a very dangerous situation for police officers. The important thing for us to do, right at the outset, is to train our people as well as we can to defuse the situation, to pull it down to rational levels first. Then, of course, we get into the whole area of referrals and advice, as far as we can go on that.

But we do treat this matter very seriously. We have, under the guidance of the police commission, fairly recently included what I feel, based on my own experience, is a very good training package. We have backed it up with the multiculturalism program, because many of the family disputes that our police officers attend across this province are tied to a multicultural or a different culture from the one many of the police officers themselves understand. It would appear to make a great deal of sense to treat those things back to back and we are doing just that.

**Mrs. Campbell:** When did this change occur in the program?

**Mr. Swanton:** It occurred earlier this year.

**Mrs. Campbell:** I see. I think I did ask you whether you have had any input into or any relationship with the liaison committee which I think it is fair to say I prevailed upon the Attorney General to establish. I do not think that is an exaggeration.

**Hon. Mr. McMurtry:** That is quite accurate.

**Mrs. Campbell:** Have you had any input into it? Have you had any communications with it? Do you know what is going on in that committee?

**Mr. Swanton:** I do not have any personal connection with that committee.

**Mrs. Campbell:** I knew you did not sit on it. I have been given the minutes and I am aware of the people who do.

**Hon. Mr. McMurtry:** As I understand it, Mrs. Campbell, and I have not been attending the meetings so I am getting this second hand, although I am very interested in the committee, the committee has been dealing with the issue of enforceability of orders.

**Mrs. Campbell:** That is true.

**Hon. Mr. McMurtry:** I know there are matters that would fall into the category that you have been discussing the last few moments in relation to handling these sorts

of crisis intervention involvements of police, with respect to family disputes.

Again, if I learn anything useful from this committee in relation to what might be course content at the Ontario Police College, I will pass it on. I think we will have an opportunity as the committee goes along to discuss some of these more general issues.

As you know, we were faced with some of the nuts and bolts issues as the Attorney General. I note, for example, that this week, according to the schedule of this committee, the justice committee will be hearing from the police establishment, as it were, in Ontario with respect to the children's law reform bill. Again, as we will hear on Friday I guess, there are some concerns with respect to the extent to which police are utilized in that area. I agree that the extent to which they are utilized is one issue that is of concern to the police community, and we will be hearing about this on Friday.

I think, as a result of these ongoing discussions, we will perhaps have something useful to pass on to the police college with respect to what might be done, in addition to what is done now, in relation to training when they are involved, as opposed to the issues to when they should be involved. Obviously, both these issues are quite inter-related.

**Mrs. Campbell:** The reason I asked was my understanding from the Deputy Attorney General that he did agree with me that it was indeed a learning process for the police who were in attendance at the committee. It seemed to me that that learning process could appropriately be passed on to those training police officers in this province.

3:10 p.m.

**Mr. Chairman:** Maybe I missed it, but who exactly is doing that training? What are their backgrounds and qualifications in the training process?

**Mr. Swanton:** The college staff is made up of a group of permanent teachers, people who all have police backgrounds. That group of permanent instructors is complemented by a group of seconded police officer instructors who are taken from the field usually for a period of 12 months with an option to renew their secondments for a further 12 months. In that way, we have a balance between people who have expertise in the teaching arts and a support system of seconded officers who keep some relevancy about what is being taught in relation to what is going on in the street as far as policing in the province is concerned.

**Mr. Chairman:** Have these people been through an extensive laboratory type of training?

**Mr. Swanton:** They are all qualified by taking courses at the Canadian Police College in Ottawa and attending seminars on various subjects relevant to what they are teaching. We also call upon various resource people as we can find them to come to the police college.

**Mrs. Campbell:** What type of resource people?

**Mr. Swanton:** We would have people involved with the children's aid program, probation officers, people from the judiciary, people from the universities, people from hospitals—

**Mrs. Campbell:** Are people from hospitals dealing with battered people part of the input?

**Mr. Swanton:** No, I am not so certain they are.

**Mrs. Campbell:** It would seem to me they might have a great deal to say to you about their experiences with people who have been victimized in this way.

**Hon. Mr. McMurtry:** May I interject from a philosophical standpoint which touches on police education generally? You might be interested in some of the focus that has been given on a broad basis to police education by the Ontario Police College.

I should preface my remarks by stating that the quality of police education in this province has been very high. We do not believe any dramatic changes may be made in police education generally. Having said that, we do recognize that, with the rapidly changing society, we must ensure that our police forces have access to resources that can assist them, particularly in these specialized areas. I know, for example, the chairman, Mr. MacGrath, when he was the vice-chairman of the commission, established a working relationship between the University of Western Ontario and the police college at Aylmer.

You might be interested to know the most recent appointment to the Ontario Police Commission, the third member of the commission, a part-time member and a gentleman I selected and recommended to cabinet who has been appointed as of December 1 is a distinguished educator in the broadest sense, with no background in policing. Dr. Thomas Hockin is a distinguished political scientist at York University and, for almost the last seven years, has



been headmaster of St. Andrew's College in Aurora. He is leaving St. Andrew's to go into the private sector.

I mention that because Dr. Hockin, with his interest in education generally, will be focusing on the whole area of police education, on how better linkages may be established with specialized groups who can assist in police education. I thought you might be interested in that focus given to the Ontario Police Commission and the police college which works very closely with and is administered by the Ontario Police Commission.

**Mrs. Campbell:** I just felt we needed to have all of the input we could get in an area which, tragically, seems to be growing. I am not sure I could prove that if I were pressed. It may only be that more cases are reported than formerly. I have no way of testing that kind of statistic but, certainly, more are before us. I would hope that at some stage somebody could really undertake to find out for us whether this is a change in our society, a stepping up of this activity or simply a matter of more open reporting by victims.

**Mr. Chairman:** Certainly any MPP knows he runs into a great number of cases. It is certainly a problem.

**Mr. Lawlor:** At the beginning, with respect to the very thing we are talking about I want to commend, not to the Solicitor General particularly because he stays up all night reading anyhow; he reads the wrong things, that is all—a booklet by William Ker Muir, Jr. called *Police: Streetcorner Politicians*. In the broader gamut of police work, attitudes and approaches, but not technical aspects, he analyses four typical policemen on a force in a city of the United States. It gives a delineation of their characteristics—quite different types of men, et cetera—and gives a profound insight into police training and background.

**Mrs. Campbell:** Excuse me, could we have the author?

**Mr. Lawlor:** The author is a fellow by the name of William Ker Muir, Jr. I like the phrase "streetcorner politicians." It kind of catches us.

**Mr. Chairman:** We will pass the book around. Mr. Kerrio, do you want to pass it around for us?

**Mr. Lawlor:** I did want to make a remark about the chairman, having been once upon a time a chairman myself. The arbitrariness of the chairman ruling out in advance and without knowing the subject matter is a kind of occupational disease from which they universally seem to suffer. I assure the chairman

the matter I wish to address falls within the ambit, not of his authority but of his interest.

**Mr. Chairman:** Everything you say is interesting, Mr. Lawlor.

**Mr. Lawlor:** The area is the liaison. What are the ongoing legal and informal relationships between the Solicitor General of Ontario in police functions with the Ontario Provincial Police particularly, and with the federal authorities and the Royal Canadian Mounted Police?

As everyone knows, in most other provinces of Canada the RCMP are the police who supervise the widest aspects of police work. Constitutionally, Quebec and Ontario and maybe some of the other provinces, but not many, have almost from the beginning set up their own police forces and exercise their jurisdiction there. My feeling is—and I want to learn from the Solicitor General—I do not think those relationships are very closely defined. I think they are as vague as blazes and that your inter-relationships are not clear in the least. They are not laid down on paper.

3:20 p.m.

I do not wish to get deeply into this today, thank you, but with the whole Checkmate operation, I was startled by this report you tabled in the Legislature to learn that a number of RCMP officers, such as Inspector Pelissaro, were interviewing with respect to carrying out the function you have as Solicitor General to see that the crimes of any element of the community were brought to the surface, detected and taken before the courts; and that he—on interrogating numerous officers, who themselves admittedly were not in any way involved in illegal operations or in any way questionable—refused to communicate with your emissary. That bothers me. By what right do they refuse? Any other citizen is expected to co-operate a fortiori. One would have thought the federal police authorities would be prepared to give you the fullest measure of co-operation.

May I say I give cognizance to Judge McDonald's role in this whole thing, in his failure—let us put it that way—to make disclosure of information to you under this very head. Under the Solicitor General's estimates for the past five years, or three years anyhow, we have brought this subject up before you. You have given us assurances. On one side you say: "I am just as interested as any one of you in law enforcement in this province. I recognize my responsibility in all dimensions of that work. To my knowledge, as things presently stand, there were no acts



committed under the Criminal Code or otherwise that would be subject to prosecution in my jurisdiction as far as I have been able to determine." We have always accepted that. That seems to be less and less clear as time goes on, when fellows like Dowson or Riddell take off in private prosecutions in matters of this kind, making certain allegations.

Let me say in parenthesis that I do not object to you making a stay in this particular case. Some of my colleagues do not quite agree with that. My own position is I see good reason for it. It probably would have gone defunct. But I also want to bring up, not just with respect to the RCMP, but as a general problem, the problem of superior orders and this weird phrase you have inoculated yourself with—what is it called?

**Hon. Mr. McMurtry:** Inherent contradiction.

**Mr. Lawlor:** Yes, inherent contradiction.

**Hon. Mr. McMurtry:** I am sorry, it did not originate with me.

**Mr. Lawlor:** Life is full of inherent contradictions. I am just interested in this one.

**Hon. Mr. McMurtry:** This phrase originates back to about 1970 with the federal government. It is a very interesting phrase and probably fairly descriptive.

**Mr. Lawlor:** I do not think it is descriptive of anything.

**Mrs. Campbell:** Signifying what?

**Mr. Lawlor:** Good for you, Margaret.

**Hon. Mr. McMurtry:** Inherent contradiction of the law enforcement body which may be breaking the law in the interests of national security. That is the total phrase. The two words "inherent contradiction" are simply a short form of that phrase.

**Mr. Lawlor:** And with the concept of superior orders worked into the thing.

**Hon. Mr. McMurtry:** I think that may have been somewhat misrepresented, judging by some of the press reports. I would like to discuss that aspect of it too, if you like, Mr. Lawlor. I personally was a little disturbed by one particularly inaccurate account that appeared in the daily press suggesting that the fact that some of the junior officers had received instructions which may have led to a breach of the Criminal Code was a major or significant issue in so far as any decision to lay or not lay charges was concerned. That was the impression created by one news report. I just want to make it clear at this time—I

guess I am wearing my Attorney General hat this time—

**Mr. Lawlor:** You do not get them confused, do you?

**Mrs. Campbell:** Oh, I think he does.

**Hon. Mr. McMurtry:** No, never.

**Mr. Kerrio:** Is that an inherent contradiction?

**Mrs. Campbell:** Yes.

**Hon. Mr. McMurtry:** That was a relatively minor consideration as to whether charges would be proceeded with. The major consideration was, of course, that a very experienced police officer with the OPP who was in charge felt he did not have reasonable and probable grounds to lay charges. That was the fundamental issue to be determined in so far as the police investigation was concerned on the evidence that he had available to him.

**Mr. Lawlor:** At that time.

**Hon. Mr. McMurtry:** Yes, at that time. Then there was the issue, notwithstanding the fact that the duly constituted police authority, having done an investigation, was not able to come to that conclusion, of whether private citizens should, as you say, go ahead with a private prosecution.

The point I am trying to make is that if the OPP inspector had come to the conclusion there were reasonable and probable grounds to lay a criminal charge, the fact that these people were carrying out orders of senior officers would not have affected the matter in so far as proceeding with the prosecution was concerned. The prosecution would have been proceeded with and the matter of superior orders might well have been a matter that related to penalty if there was a conviction. So I think there was a little bit of confusion as to the extent to which that particular issue played a role in the staying of these prosecutions. Of course, the matter is still not yet resolved.

**Mr. Lawlor:** Stay of prosecution lasts only one year. That is only provisional in your mind, I take it, pending the issuance next spring of the fourth volume of the McDonald report, which may have more disclosures than you presently possess and is anticipated to lay the bones bare.

**Hon. Mr. McMurtry:** Having dealt with the McDonald commission, I would hesitate to speculate about anything.

**Mr. Lawlor:** What bothers me on this particular account is that you had a glorious opportunity—true, for only a very few months, but adequate to the need—to inter-

rogate your old and trusted friend Allan Lawrence when he happened to be occupying—

**Hon. Mr. McMurtry:** We did. There was a federal-provincial meeting of Ministers of Justice and Solicitors General, in which this issue was discussed, while Mr. Lawrence was federal Solicitor General. He undertook to provide all relevant information to provincial Attorneys General. I suspect he did so notwithstanding the objections of some of the staff. But having been a provincial Attorney General, I think he had a much better understanding of the role of the provincial Attorney General than the present federal Solicitor General has, obviously, and made that undertaking. As soon as there was a change of government, of course, the bureaucrats, who did not change, prevailed where they were unable to prevail with Mr. Lawrence.

**Mr. Lawlor:** I just want to get one thing into the record. I have been looking at M. L. Friedland's study, prepared for the McDonald commission, on National Security; The Legal Dimensions. He says on the subject of superior orders: "Closely connected with mistake of law is the potential defence of superior orders. Can a subordinate policeman rely on the orders of his superior to justify his actions? The answer would seem to be no, although it may be that a superior order can provide a defence when it brings about a mistake of law in a case where the accused person thought that his own conduct was therefore lawful. A defence is clearly available if the superior order brings about a mistake of fact in a case where mens rea is required." Do you take that to be an accurate statement of the position of any policeman, RCMP or otherwise?

**Hon. Mr. McMurtry:** I would not quarrel with that statement, expressed as it is in fairly general terms.

**Mr. Lawlor:** Just one other interesting element of it: a defence of superior orders does apply in one situation and that is the suppression of riots. There they may plead on that basis. Can you give some outline or indication as to what the liaison of the Ontario Police Commission is with the RCMP?

**Hon. Mr. McMurtry:** First, I will make the general statement I have made on earlier occasions, that the working relationship with the RCMP senior officers in Ontario is really quite positive and with respect to most of the senior personnel we deal with, up to the commissioner level in Ottawa, has been quite satisfactory. The difficulty we have encountered is that the

so-called political masters of the RCMP in Ottawa do not know what the hell they are doing. They have made life very complicated for the federal force because they have not been able to develop any coherent policy. That is where most of the difficulty lies. I know that some of my Attorney General colleagues across the country have sensed from time to time that there is not any real feeling of accountability to them as provincial Attorneys General as opposed to their accountability to Ottawa. I believe that when it comes to criminal investigations the RCMP generally feel quite accountable to the Attorney General for Ontario.

The problem, of course, arises in national securities matters, as I understand the RCMP setup. There are others here, including the commissioner of the Ontario Provincial Police and the two deputy commissioners, who are much more knowledgeable than I am when it comes to national security matters. The officer in charge in Ontario for the RCMP does not know a great deal about what is happening in relation to national security. They seem to have a split responsibility, both reporting to Ottawa.

I would prefer it if the RCMP officers in Ontario who are engaged in national security were accountable to their provincial senior officers. We have two divisions in Ontario—O division and A division. The latter is mostly eastern Ontario and north-eastern Ontario, and most of them are in O. My understanding of their setup is that those engaged in national security are not accountable to the commanding officers in O and A divisions and that can create a problem.

I recognize that the RCMP attempt to co-operate with us in criminal investigations to the best of their ability. But the people of Ontario are better served, in my view, by having their own provincial police force accountable to this Legislature than they ever would be served by a police force that is basically accountable to Ottawa. There is absolutely no question in my mind that it is preferable to have a provincial police force, given the importance of their responsibilities, that is accountable to the provincial Legislature. I think the citizens are better served. I believe that feeling is held by several of the western provinces who, of course, don't want to be perceived as attacking the RCMP. Over the years they have been a very distinguished organization. But the issue of accountability is there.

**Mr. Lawlor:** Mr. Chairman, I will not persist too much further. The RCMP, I take it,

tend to limit themselves to that which falls clearly under the constitution—customs, let us say, or drugs. To what extent do they deal with general crime on an interprovincial basis?

**Hon. Mr. McMurtry:** As we all know, major crime today has an interprovincial and international dimension to it. The RCMP in Ontario are therefore involved in matters that have interprovincial and international dimensions. But the RCMP work very closely in most respects with the Ontario Provincial Police and major regional and municipal police departments. For example, we have a number of joint force operations that will involve the OPP, the RCMP and a municipal or regional police force—three forces working very closely together in relation to certain criminal activity.

There are tensions that naturally exist in any human endeavour. There are certain rivalries that one would expect from time to time between the police forces. But my own perception is that the co-operation between the forces has improved greatly in recent years and, while there will be the occasional problem from time to time, it generally is very good.

**Mr. Lawlor:** I take it there is nothing laid down by way of guidelines? This is all done by rule of thumb?

**Hon. Mr. McMurtry:** No, there are some general guidelines and you have touched on them. We feel that the RCMP have responsibility in detection and enforcement of federal revenue-producing legislation.

3:40 p.m.

It seems reasonable that a federal police force should have the responsibility for enforcing federal legislation which directly relates to federal revenues—such as the Income Tax Act and the Excise Act. Generally, the RCMP are quite involved in drug enforcement because of the international and interprovincial involvement. But generally the RCMP's activities are related to federal revenue-producing legislation, the Narcotics Control Act to a large extent because of the international and interprovincial dimensions, immigration matters, national security of course.

But generally speaking, it is our view that the provincial police forces should have paramountcy and really should have the responsibility for criminal investigations generally that do not fall within those categories. However, there is a grey area where you cannot be precise—when the criminal conspiracy involves more than one jurisdiction

and the RCMP obviously do have a role. We feel that is a role that should be fulfilled in close liaison with our provincial police forces who have the constitutional responsibility for law enforcement, particularly with respect to the enforcement of the Criminal Code.

**Mrs. Campbell:** Might the RCMP not take the position that it might interfere with their function to disclose the various matters? We do not want to interfere with the administration of justice. It is breathtaking, is it not, Mr. Minister?

**Hon. Mr. McMurtry:** If you are seriously suggesting the justice committee should be regarded as a duly constituted law enforcement body to investigate a crime—which seems to be at issue between us at the moment—I think that is exactly the point we have been debating around here for the last couple of weeks. A criminal investigation should be carried on by police forces, not by legislative committees. That is the message I have been trying to get through.

**Mr. Lawlor:** A final question: Does your office have personal contact with senior members of the RCMP?

**Hon. Mr. McMurtry:** I am in direct contact occasionally with the commanding officer of O division, which is the major division here. But 99 per cent of the contact with them is between senior law officers of the crown and senior police officials.

**Mr. Lawlor:** But once in a while you do?

**Hon. Mr. McMurtry:** Oh yes. I meet with the RCMP. For example, we have fairly regular briefings. I have briefings with respect to the state of crime in Ontario, which are attended by the commanding officer of O division and some of his senior officers, the OPP, Metro and other police forces. The OPP and the RCMP brief me on a regular basis with respect to criminal activity in Ontario and I regard those briefing sessions as very important. But on the day-to-day business of the police force, I do not have much direct involvement—nor should I have, in my view.

**Mr. Makarchuk:** Mr. Chairman, does the police commission take any responsibility in terms of upgrading the municipal police forces in Ontario? I am thinking in terms of education, of the report that was submitted to the minister, the task force on racial and ethnic implications of police hiring, training, promotion, career development, et cetera. Has responsibility been assigned, and have you got programs on stream, or starting soon, that would be given to the police officers?



**Hon. Mr. McMurtry:** Mr. Swanton, the director of the police college, addressed the administration on that issue. You may have been out of the room, Mr. Makarchuk. He was indicating that these matters were given a high priority at the police college. As far as other police colleges are concerned, like the Metro Police college in Toronto and the Ontario Provincial Police College, it is a matter they are very interested in.

As I indicated in your absence, it is my intention to maintain an ongoing dialogue between the senior police officials of the Ontario Police Commission with respect to police education in the 1980s. We, the law enforcement in Ontario, think we do a pretty good job, but we obviously have to continue to learn. It is just like with lawyers or legislators or any other profession; it is an ongoing learning process. The police feel the same way.

**Mr. Makarchuk:** But to be a lawyer or a politician—those are fields in which you do not require any training the same as a policeman.

**Hon. Mr. McMurtry:** We think police officers require a great deal of training.

**Mr. Makarchuk:** I am not too sure about that. There is the problem that the municipality will have to send an officer to a police college, and they want him on strength, and they are not prepared to lay out too much money to pay him a salary while he is there. I understand that is the situation right now.

A letter I received from the Metropolitan Toronto Police indicated they had 5,404 police personnel. Out of that, 91 of them have a bachelor's degree; four have a master's degree; 110 attended university for one year, 49 for two years, 15 for three years, and one person is at present on full-time educational leave.

Counting those with degrees and those who have at least one year of post-secondary education there are some 270 officers, or five per cent of the force. I could go to the assembly line at Ford or the Massey-Ferguson plant in Brantford and I am sure you would find a lot higher percentage of people with post-secondary education than you would on the police force. That bothers me.

I am not saying post-secondary education is the answer, or that everybody should have it, but somehow I feel there should be some effort on the part of the Ministry of the Attorney General, in one way or another, to do some upgrading. If you have to provide the upgrading yourself, say for post-secondary education or for some of the

things outlined in your report concerning ethnic cultures, et cetera, you should be doing it. I think you should be putting pressure on the police commissions. I think in the long run it is of benefit to everybody. With a better-educated labour force, or a better-educated police force, you get much better results.

You say we have started these things, but I think some of the problems you have had with the police—dealing with minority groups, dealing with people with behaviour problems or character disorders, et cetera—possibly could have been coped with a lot better if the police had some kind of training. The police colleges have started a program, but it seems to me you have a long way to go.

I noticed from the figures provided by your ministry that of the people who were recruited in the Niagara region in 1979, 100 per cent of them had no post-secondary education; in Halton, 80 per cent did not; York region, 71 per cent; Ottawa, 91 per cent; Stratford, 100 per cent; Windsor, 100 per cent; Guelph, 87 per cent; Haldimand-Norfolk region, 77 per cent; Barrie, 66 per cent—they have a few smart ones in their force; as a matter of fact they have the best record—Waterloo region, 72 per cent.

Considering the pay the police get these days in comparison with what other people are being paid, certain demands should be made on the police commissions—I realize you do not do the hiring—some moral suasion, leading them down the road to realize there should be these kinds of changes made. I hope the minister takes that very seriously.

3:50 p.m.

**Hon. Mr. McMurtry:** I would like to make some comments. I am very interested in your comments, Mr. Makarchuk. I think we have to look at a lot of the traditions relating to policing.

I would like to preface my remarks with the general observation that I have no quarrel with the accuracy of your figures—we probably provided them—on the relatively small percentage of university trained police officers who exist in Ontario. I have obviously taken a great interest in policing as a lawyer, dealing with police on both sides of criminal law for many years. Despite the fact that we do not have a high percentage of university educated police officers in Ontario, I have yet to see a jurisdiction, or to be acquainted with a jurisdiction that provides a higher quality police force. I cannot say we are the best



in the world in Ontario, but we are certainly second to none, and I feel that very strongly.

Having said that, I am reminded of certain traditions with respect to on the job training. My own late father, whom I like to think of as a very distinguished lawyer, never went to university. He took his law under the old way of training, where you went into a law office and worked over a period of years and wrote exams. It was on the job training, to a very large extent. That was not so many years ago.

Many of his colleagues, many of the great lawyers of his time, received their education by on the job training. Obviously, the same approach has been taken to policing. We're not saying—

Interjection.

**Hon. Mr. McMurtry:** Let me finish, in order to put the whole thing in context. This is not to say that policing is not changing, or that there will not be a larger percentage of university graduates attracted to policing. My own belief is that there will be. Just as some of the professions have gone through an evolution—and on the job training was considered the best approach—I think we will see more and more university trained people attracted to policing.

First of all, it provides a very interesting, challenging career.

Our universities—having gone to university, a few years ago mind you—certainly have not become more highly structured since I was there, perhaps less so. Let's face it, traditionally most students have gone to university in a highly unstructured atmosphere, where they know very little about any discipline except self-discipline. It has not been that easy to cope with an institution that does have a more disciplined atmosphere, when you have just emerged from university life, which is probably the most undisciplined atmosphere anybody could experience.

Obviously, to move from a highly undisciplined atmosphere where you have spent four years, more or less, to the relatively disciplined structure of the police, creates some problems. I think up until relatively recently university graduates thought policing was a little bit beneath them, to be quite honest with you. It is a silly attitude. It is quite inaccurate.

**Mr. Makarchuk:** So is plumbing, and so is electrical work.

**Hon. Mr. McMurtry:** There was that kind of snob atmosphere associated with the university graduate. University graduates are now beginning to realize that a police career

is a very distinguished form of employment and has a lot of attractiveness in so far as career opportunity is concerned, notwithstanding the disciplined atmosphere and the shift work. It is really a very stressful type of life.

Some of my police friends here would probably deny it, but I have to recognize that a few years ago if you came from a university to a police force, I rather suspect there might have been a little scepticism going in both directions. It is an evolutionary process and the high quality of policing we enjoy indicates they have done a pretty good job.

I am not quarrelling with what you are suggesting. We are establishing much closer links with the university community in order to encourage a higher percentage of university graduates to seek police careers. Nobody has ever suggested to me that the police forces have actively discouraged university graduates. Nobody can make that case. It is just a question of talking about two very different ways of life and creating the necessary interaction.

**Mr. Hilton:** If I may support you in this, Mr. Minister, I am just casually looking through these reports. In 1979, 13 university graduates went to the Peel regional force. Five university graduates were recruited in the Waterloo region. Five were recruited in York region, and one out of two recruits in a smaller force in your own community of Brantford was a university graduate. There is a good deal of evidence that this type of employment has some attraction to people with university education. I submit, while this does not break down the type of university education, I would associate myself with your remark that education in any field can be a benefit.

I am again reminded of my father's expression, similar to the minister's, that an educated fool is a bigger fool and education never made brains.

**Mr. Makarchuk:** Thank you, Mr. Minister, I want to point out to you that we can talk about our police force, and I think we have excellent police forces, but we have to give credit to the people who have managed to ensure that we have a great police force, sometimes under great difficulty. I also want to point out that you can have the greatest police force in the world, but if the politicians do not take care of some of the inherent frustrations in society you are not going to take care of the problems either. We have to deal with a two-pronged approach.

Getting back to the on the job training, I quite agree with you. Most of my training was on the job too. I want to make sure there is specific on the job training, and that there are programs going on in various police departments for which you make arrangements. The spending of the tax dollar is always a problem. The police chiefs will say we need the people at home, we have these problems, et cetera, and there is always that conflict going on.

At the same time, I think perhaps you should either arrange financing or make provision for each municipal police force, as well as the Ontario Provincial Police, for a certain percentage to take either a year's course or sabbatical, or whatever it is, related to their police service. An investment in that sort of program will not be too great. The dividends will be excellent and will help us. You are not coming through with a police bill, but it would certainly help you in the long run to deal with some of the problems that hit the headlines every so often which are an embarrassment to you and to society. They blacken the whole thing, sometimes for very unfair reasons but the perceptions are there.

I would like to know what the ministry is considering, besides new recruits going into the Ontario Police College. What other programs are you considering specifically where policemen on staff in various municipalities can take part?

**Hon. Mr. McMurtry:** I think the chairman of the Ontario Police Commission, Mr. MacGrath, would like to offer some comments as well, Mr. Makarchuk.

4 p.m.

**Mr. MacGrath:** Mr. Chairman, as a result of our endeavours with the University of Western Ontario, we are encouraging all 14 universities to take up Western's program so that forces nearby can avail themselves of post-secondary education or police post-graduate training. We are about to start a study with the Ministry of Education to see how we can co-operate with community colleges in encouraging them to put on better courses for police officers once they have had a year or two of experience.

I agree with some of what you are saying, sir, but again we are coming up against the cost factor. Can the smaller forces release men to take six-week refresher courses at police colleges? The municipalities will tell us they do not have the funds or the strength. The Ontario Police Commission is guided in its endeavours by an advisory committee on general police training, made up of people from various walks of life. In

the past year and a half the emphasis has been on continuing education for all police officers. In addition to recruit training provided at Aylmer, there are 41 additional courses available. In the fall of next year we will be introducing for the first time a senior command course, as called for in the report on police training.

**Mr. Makarchuk:** How many people do you expect will be able to take these courses? Does it depend on whether the municipality has the willingness to release them to the course?

**Mr. MacGrath:** There are two factors. We will have two senior command courses next year. Each will be of three weeks' duration. The maximum number in each class will be 24. It would be impossible for the resource people to work with anything larger than that.

**Mr. Makarchuk:** Besides the professional training for the policeman on the street, somehow, when you have a dispute such as the one in Brantford between the Ontario Police Commission and the local police commission, perhaps some management courses for senior personnel should be available. I suppose you do have your conventions and your get-togethers, but perhaps some kind of training session for a week or two or three should be available, in terms of dealing with management, more efficient use of manpower—there are all sorts of things—such as is done in private industry.

Private industry continually provides training for people with seminars. It sends them to universities, special courses, special institutes. I think you should be doing the same thing with police. Perhaps the Ontario Police Commission should undertake that responsibility, besides filling what I perceive as a supervisory capacity, where you can analyse the thing. Perhaps you could move into a municipality or a local police force and help them sort out their problems. That would be a much better way to operate. You do an analysis, put in a report and then you have an argument. I have a feeling that nothing gets done.

In Brantford you did a report in 1976, another one in 1979, and the world still revolves the way it used to revolve without much being done. Perhaps if you have the staff you could put a staff person or two in there to sit down with the people and the local police commission. It may take some time but perhaps you could help them in those kinds of things. Or, if necessary, send those people out to some management courses. There should be suitable manage-

ment courses for senior police officers to help them resolve some of the problems.

**Hon. Mr. McMurtry:** There are. The senior police personnel take these refresher courses at the police colleges on a regular basis.

I would also like to say with respect to management of local police forces, reports that may be done for a local police force—you mentioned the Brantford controversy, if I may describe it as such. Under our philosophy, we do delegate quite a significant amount of responsibility to local boards of police commissioners and it is the old story: you can lead a horse to water but you can't make him drink. If the local board of commissioners or the local municipal council are apprised of reports, and in this case they obviously were, then they do have a responsibility to bring pressure on a local board of police commissioners if they accept the wisdom of the report.

I do not think it would be a good idea, nor does the Ontario Police Commission, to want to make all of these decisions for local police forces. I do not think they have ever sought that authority because with local autonomy comes, in general respects, a sense of responsibility and, I think, better policing than if they were being dictated to by some province-wide organization.

**Mr. Makarchuk:** I do not think they are going to deny them their responsibility. What I am arguing here is that somehow there is room for greater efficiency. It appears to me that we have piles and piles of modern information available as to how various management problems are dealt with in the private sector of the capitalistic society. They are quite efficient in dealing with some of those situations and perhaps what you should do is borrow some of those things. I do not hesitate, despite my Socialist leanings, to borrow from the capitalists, so I do not see why you, as the Solicitor General of Ontario, should not allow your senior officers to go out there and look to see what industry is doing in terms of how they manage their manpower and what methods are available to improve their operations.

**Hon. Mr. McMurtry:** We do. I just repeated the fact that we do.

**Mr. Makarchuk:** I do not know the curriculum of the Ontario Police College or the people you have lecturing there, but somehow I feel if you put them into management situations in some major corporations you might confuse the hell out of them. On the other hand, however, they may be able to learn a few things.

**Mr. Hilton:** May I assist, Mr. Makarchuk? We have 11 advanced training courses throughout the year. We have two intermediate command courses, that is upper middle management, people who are looking to senior appointments. We have one new senior command course and one existing. We added one in the senior command course.

In addition to that we have two senior officers' intelligence courses within the year and we have one senior officers' seminar in the year, which is a time for exchange of information in a nonconvention atmosphere, but in a classroom consideration of common problems and the handling of those.

I did not add those all up, but it will be seen that within the framework of the pressures on the institution for the big courses, like probationary officers part A and probationary constables part B, there are command courses. The other parts of the year are taken up with specific courses in criminal investigation, identification, colour photography and the like, but there is no ignoring of the organizational courses for senior management.

I know it happens, though I can give you no specific examples at this moment, that in a community where industry is present—and in some of these small communities, industry is not present—the police, by working with the industrial leaders of the community, learn about matters of management. In addition to that, the OPP runs its own courses for its staff in this. Metropolitan Toronto runs its courses within its own framework and its own established schools, as does Hamilton and other major forces where management and organizational detail are of importance. In a little five-man force, they are not of the same importance. All that you say is recognized, is true and is being constantly sought to be coped with by the police community.

4:10 p.m.

**Hon. Mr. McMurtry:** I would like to add the observation that we are pretty proud of our police college. Not that we cannot continue to learn from other jurisdictions but, as Mr. Swanton points out, during his seven months as director of the college he has had visitors from three different continents coming to Ontario to learn about our police training and how the police benefit by it.

**Mr. MacGrath:** Additionally, senior officers from all forces in the province, including the Ontario Provincial Police and the municipal forces, have the facilities available at the Canadian Police College in Ottawa. So far in the calendar year 1980, which is 10 months, we have sent 190 people there. I



cannot give you a complete breakdown, but these 190 attended two different courses, the senior police administrative course and the executive development course. These are senior officers.

**Mr. Makarchuk:** Having said that, and having suggested you send them to see how management operates in industry, I would also suggest you send them to participate in some labour seminars to eliminate the problem you are not really prepared to cope with right now of violence on the picket line and the arguments and battles that go on there. They still go on, are expensive and do not add anything to the community. Instead, they create hate on both sides, certainly on the part of a lot of the union members towards the police. Perhaps you should try to see what you can work out there.

There is a difference. I do not want to see a repetition of what you had at Fleck where you sent people in to intimidate the workers. I do not say you did, but people who were there did. You should perhaps get some of your senior officers to understand some of the problems and feelings of labour and the reasons they are there and so on.

As I mentioned earlier in my opening remarks, perhaps you should try to get it legislated that when a place is on strike it is closed up. Let us not have any of this violence we have on the outside. I think that is a festering sore in Ontario right now. Up to this point, it does not seem to me anybody in your government is really anxious to take care of this situation right now.

**Hon. Mr. McMurtry:** I will comment on that, if I may. First of all, two out of three parties represented in this Legislature simply do not favour legislation that would allow people on strike to close down a business. To date, it is clear the great majority of the legislators in Ontario are opposed to a process that would allow strikers to close down a business, period. The police community does not make the law. It attempts to assist with respect to the enforcement of the law and, of course, the difficult situation it faces in keeping the peace on picket lines is a responsibility it would be delighted not to be confronted with because it is a difficult, challenging and unpleasant task in many cases.

The police community is very sensitive to this. I have to make it clear for the record I do not accept for one moment the suggestion that the police community in Ontario is not sensitive to this issue. I realize this was made a great issue of at the recent meeting of the Ontario Federation of Labour,

but I also say I was sitting with Mr. Cliff Pilkey at a meeting with the Minister of Labour (Mr. Elgie) a year or so ago and he said to me in his own frank way: "Look, we don't have many issues. We are looking for issues, so we have to make an issue out of this one."

I think that rhetoric has to be placed in its right context. I have heard frequently in recent months from union people who have been praising the police for their conduct in some very stressful situations. I want to make it clear, first, that I think the police are performing well in this area. Second, I think that is appreciated by the labour movement despite some of the rhetoric we hear from some leaders. Third, the police community will continue to remain sensitive to this difficult issue.

**Mr. MacGrath:** Mr. Minister, in relation to the sensitivity you have just expressed, I have asked the chairman to review, and he has reviewed, certain suggestions that might be sent to all chiefs of police in relation to labour-management conduct and conduct on strike occasions so we might have the input of labour in this. We consulted the Ministry of Labour and it was good enough to send us one of its senior people, a person who has been sensitive and active on the labour side, to review this with us.

In addition to that, I have an old friend who is a vice-president of the Canadian Labour Congress in Ottawa. I phoned and asked him to recommend someone who would sit down with us and review this so we would not exacerbate a situation we are seeking to understand. Perhaps we do not understand as well as we should, but we are seeking to improve our understanding and work with union personnel to achieve greater accord in these circumstances. Indeed, a meeting was to be held yesterday with that gentleman and his friend. It had to be cancelled by him, not by us, and a new date has been set for about two weeks from now. While we may not be perfect at it, Mr. Makarchuk, we are concerned and we are trying.

**Mr. Makarchuk:** I am glad to hear that and I am glad to see you are moving. You are quite correct, you are not perfect at it. I suppose it is a situation in which it is difficult to attain perfection. I think you should recognize there have been unfair incidents on the picket lines and when there are unfair incidents there is no added credit to anybody. It just exacerbates hos-



ilities on both sides, which is not something you need.

I do not buy the statement this is just looking for a cause. I have been involved in some situations myself in which there was absolute and open unfairness. If you talk to some of the people who have been involved in these particular strikes—Fleck, Radio Shack, or Texpack in Brantford, et cetera—you will see there is a lot of room for improvement. There is no question about it.

I believe in the idea of freedom of association, that people have a right to associate and to inform other people what they are doing and what they are all about. When you put the police in there so they cannot talk to their people, you are breaking one of our freedoms and that is a matter of concern to me. Why don't you let the workers talk to the people they are hauling into the plant to strike-break and give them a chance to explain the circumstances?

You do not do that. You come in with these armoured buses, you drive the people away, you get the dogs and the guys with shields, batons, clubs, et cetera, and you intimidate people. I noticed in the Texpack case there was a bunch of women and you attacked them. That is not the way this society has been designed to operate. It is not the way I want it to operate. If you sit back and say there really is not a problem, I think you are closing your eyes to something of utmost importance.

**Hon. Mr. McMurtry:** We recognize the challenge to appear to be fair and impartial. It goes without saying, Mr. Makarchuk—and it will come as no surprise to you—that I reject out of hand some of the allegations you have made in the last few moments with respect to police conduct. It is not a question of whether I accept the facts. There are many people at these strikes who have no axe to grind for either management or labour. There are independent observers at most of the volatile strikes in Ontario.

4:20 p.m.

Their reports do not accord with the statements you have just made. These strikes are not carried on in isolation. If there are abuses by police on the picket line there are many people who can testify to that fact who do not represent either management or labour.

With the greatest of respect, you are being very unfair to the police community in this province. While we have never claimed any degree of perfection, and while we recognize it as a serious challenge requiring the

utmost sensitivity, I think your general statements are quite unfair to the police community simply because they are quite inaccurate.

**Mr. Makarchuk:** I am not saying that the police, per se, are the ones who are causing the problem. The police find themselves stuck in situations where, because of the dynamics of pushing and shoving, these things develop. It is your responsibility, as the senior law officer of the province, to try to ensure that this does not continue.

To say it does not happen or has not happened means you have your head in the sand. It has happened at Texpack, Fleck Manufacturing and Radio Shack, to mention a few. I have been on some of those picket lines and I have seen what goes on. There is a sense of unfairness. You deny the people the right to inform other people and that is going against one of the precepts of our society. That is all I have to say at this time.

**Mrs. Campbell:** Mr. Chairman, picking up on the last points that were made about labour disputes, I wonder if the Solicitor General has addressed this question: It seems to me we are in the same position with this as we were with police chases; that is, somebody gives direction.

You will recall, Mr. Minister, that I drew to your attention the Fotomat situation about which you, yourself, were very concerned. I have forgotten how many cars they dispatched for a handful of women who were not really capable of creating a disturbance and who were not creating a disturbance. I recall that after the minister investigated there was advice given to the company to give better information in future because that was an over-reaction. I do not want to put the blame on the police officers, but on the information upon which they are dispatched. I wonder if there is an opportunity for the person receiving information from the company, as happened in this case, to get some facts before he sends out large numbers of vehicles to look after about seven women marching around one of those little shacks. You will recall that they drew it to your attention, and that those instructions did go out in that case.

It seems to me that quite often the individual police officer is nailed for something that ought to be corrected when the information is passed forward. That might be something which you could usefully pursue. I suppose the police act on the basis of the information given. Perhaps a minute or two of some questions being asked would stop them. In that case, it seemed like real in-

timidation, and I am grateful that the minister reacted in the same way I did, saying it was really just too much. I presume that the police officers, having been directed to go, had no alternative. I think it is unfair to them that they should be placed in that position.

I wanted to say a word about the discussion we had on university education. I am not opposed in any way to educating police officers. My view—and perhaps I was an exceptional person—was that all I learned at university was how to find what I was looking for in the way of information. In the final analysis, that is what you find.

I will tell you that I have known a great many police officers in the Metropolitan area over quite a long period. Some of the finest ones I knew were people obviously well trained in police work, but not university graduates. I just do not like to go away with the idea that, somehow or other, if you do not have something to wave by way of a certificate you are something less than a good police officer. I just wanted to make that point.

I would like to know if I could have information about the Metropolitan Toronto police force, because I understand that certain officers there are selected for training with the FBI in the United States. Is that still a practice?

**Hon. Mr. McMurtry:** I believe that somebody goes down every year.

**Mr. McGrath:** One a year goes to the FBI Academy in the Washington area.

**Mrs. Campbell:** Do they take the course there?

**Mr. MacGrath:** It is a formal course there. There might be five or six from across Canada attending the FBI Academy at Quantico. That attracts English-speaking officers from all over the world.

**Mrs. Campbell:** I just have a concern about what they may be learning when they go down there, not being one of those who has any great enthusiasm for certain aspects of FBI activity. I presume they are going there for purely technical training. Is that correct?

**Mr. MacGrath:** I could not say yes or no, because I am not at all familiar. We have no association with the academy at Quantico. I am just aware that some of the forces do send their senior people. I know at the moment there is one from Hamilton, one from Calgary and one from Edmonton. I just got that information by happenstance, more or less.

**Mrs. Campbell:** How many from Metro go through the police college? They go through their own, I presume?

**Hon. Mr. McMurtry:** No, they all go to Aylmer.

**Mrs. Campbell:** All of them?

**Hon. Mr. McMurtry:** In the last five years.

**Mrs. Campbell:** So there is no problem as far as Metro Toronto is concerned.

**Mr. Hilton:** And the OPP.

**Mrs. Campbell:** Yes, of course.

I think that probably finishes my concerns. The only thing I continue to be concerned about relates back to an earlier discussion. That is the use of officers who, for one reason or another, have to be placed or ought to be placed on a somewhat relaxed service.

I have not had occasion recently to observe whether there have been changes in Metropolitan Toronto, but I wonder if those police officers cannot be deployed in a more imaginative or creative way. I had expressed my concerns before, and I say it again: If you decide that the only place to put them is around cells, they do get a very jaundiced attitude as to the public at large. I think we ought to be working towards putting them into areas where they are not constantly running into a certain element in ascribing all those values or lack of them to every member of the public who happens to be in an area. I think that kind of thing does bring disrepute to the very fine police officers we have in Metropolitan Toronto. Has that situation now been cleared up?

4:30 p.m.

**Mr. Hilton:** I cannot say about Metropolitan Toronto, but within the OPP there is a broad use of people who have by reason of injury or stress or some other thing been found unsuited for general police duties.

We have, and it does not arise out of this, in electronic surveillance, for instance, one civilian who is working with us. He is blind and is able to do that work. It is within his capabilities; indeed, we believe that perhaps his capabilities are enhanced by his ability to listen, not being distracted by sight. Other officers are used in quartermaster stores or in the garage. They are used in very many areas of the very diverse aspects of policing.

It makes a desire and movement towards civilianization, as as has already been said, more difficult, because these people are officers and they are being paid at officers' salaries. Very often they are not doing jobs that necessarily require that qualification, but because a man has given of himself or a woman has given of herself physically to

the force, he or she cannot be downgraded, nor do we believe they should be downgraded.

**Mrs. Campbell:** Neither do I.

**Mr. Hilton:** But usefully used.

**Mrs. Campbell:** I just was interested, because I feel that anything we can do to eliminate causes of conflict is important in maintaining the public perception of the police force. That is the one area where I have had complaints over the years, although not recently. That is why I had hoped it had changed. Over the years, I have had complaints and I myself on one occasion advised a police officer if he did not take his hands off me I would—they just push you around because they cannot differentiate between a citizen there for very lawful reasons and the people in their charge. I still would like to see a greater improvement in that area unless something has been done of which I am not aware.

**Mr. Makarchuk:** Mr. Chairman, I just want to raise another matter and this is dealing with policing in Ontario. This is the movement by the bikers or that sort of the criminal element that is prevalent in some of those situations, particularly the matter of dealing with strippers, where the bikers have moved in, they have taken up agencies and they have used strong-arm tactics. I understand about four girls have been beaten up and the police are aware of this, yet there do not seem to be any prosecutions going on. Nothing seems to be happening to stop this problem. It is a growing problem. It seems to be increasing. I presume you are aware of it. What actions are you taking to ensure that this does not develop into sort of another gang that operates in Ontario?

I am not sure there are other gangs, but this is developing into rather an organized situation where they are taking over booking agencies and it is said that they wander into bars and threaten people. They threaten the girls. They are causing rather a lot of unsavory situations to develop. The people should not have to work in Ontario under fear or threat for their lives or threat for themselves. They are threatened with being beaten up or scarred beyond recognition or something to that effect. This is a matter you should look into. Could we have your comments on that?

**Hon. Mr. McMurtry:** The motorcycle gangs or the so-called bikers are probably subjected to closer scrutiny, well certainly as close scrutiny as any other citizens in the province, because we recognize that some of these bikers represent a very serious

threat in many areas of criminal activity. The number of so-called bikers who are charged with criminal offences every year in relation to their overall numbers is very high, and there are very few bikers operating in any area who are not kept under pretty close surveillance by the police.

We have to have information or some assistance, co-operation, with respect to laying charges in these cases. Unfortunately, that industry often tends to be a bit of a subculture itself—I am not suggesting that everyone engaged in it is—and there is often not a very high degree of co-operation with the police.

Unfortunately, one of the unhappy facts about the so-called "sex industry" in North America is that while many people feel that various forms of sexual entertainment are not unreasonable and should not be regarded as a problem in a modern day society, the truth of the matter is that traditionally in North America the sex industry, expressed in those terms, does attract the criminal element quite apart from the activity itself. This can be traced back over the years, so it is not a new phenomenon.

The police are well aware of the traditional relationships between the prostitution industry, for example, and organized crime. The prostitution industry does include—although I do not want to brand all people who are involved as strippers as part of the prostitution industry—but the truth of the matter is many are. This is known to police, and the police are well aware of these criminal associations. People who associate with criminals should know that they are embarking on a pretty hazardous course.

The difficulty for the police is that the victims often are very unco-operative so far as giving necessary information to the police. We realize there is a great deal of intimidation, as there is in other criminal activities, and this is part of the problem. Regrettably, Mr. Makarchuk, this is not a new phenomenon, and I can tell you any activity involving the bikers in Ontario is pretty closely scrutinized by our police forces because the fact of the matter is they are engaged in a great deal of criminal activity.

**Mr. Makarchuk:** I do not disagree with sort of associating prostitution and stripping and all that, but I think you are going too far afield. The point is that people take up a certain vocation, and we are not here to moralize or justify one or the other, however, they should not be subject to criminal activities.



**Hon. Mr. McMurtry:** No one is quarrelling with that.

**Mr. Makarchuk:** As you say, there is no co-operation with the police. The problem that appears when you are talking to the people—what their information is—is that there is no point in co-operating. In other words, they have tried to co-operate with the police. They have gone to crown attorneys, and the crown attorneys refuse to prosecute. They say there isn't enough evidence, or something of this nature, to go ahead.

**Hon. Mr. McMurtry:** Just let me interject there because, with all due respect, Mr. Makarchuk, you tend to use a rather broad brush in discussing some of these issues. It would be much more helpful to us, rather than just sort of making very broad generalizations, if you could focus our attention on specific areas where the problem has come to your attention. You may be able to assist us with information we may not have. I am not suggesting we have all the information we want—obviously we do not. Information that is relevant can come from any number of different sources.  
4:40 p.m.

I am quite prepared to look into it any time a member of the Legislature tells me that an individual is complaining of being a victim of criminal behaviour and does not feel his problem is being given sufficient attention by the police. Just bring it to my attention—it might very well be of assistance to us—and I hope we will be able to alleviate the problem. The impression you are leaving with us is that the police across the province are sitting idly by while persons are being beaten up by—

**Mr. Makarchuk:** No, that is not the point at all.

**Hon. Mr. McMurtry:** —thugs, hoodlums, bikers. That is the impression I derive from it.

**Mr. Makarchuk:** You may get impressions; I am not sure they are valid. However, the point is that this was brought up at the Ontario Federation of Labour and there was an article in the paper on it. We are not saying all the police are not aware of it or the police do not care. Sure, they care. As a matter of fact, I know one specific incident where the policeman cares quite a bit. Unfortunately, he is not in a position to do something. Not all bikers ride bikes these days. They are mostly riding in Cadillacs.

The point I want to make is that in this case a criminal element is moving into what

really will become a legitimate enterprise on the surface—they take over booking agencies. The booking agencies become legitimate, they operate to solicit clients, to force girls into participating in the stripping activities or something like that. In that, they use the other arm, the sort of undercover arm. What is really organized crime is operating almost within the law, but its methods of getting there and its methods of operating are strictly outside of the law.

We have a lot of problems in our society, there is no question about it. But the people themselves say, "We do not have enough evidence," that the girls have been threatened, and you cannot guarantee protection for them. It is very difficult for somebody to come up and complain about something like this. In Hamilton there were examples where the bikers have taken action. There was a case where I understand four girls were beaten up.

Perhaps you will say there is sort of a fine line, but there is also a responsibility on you to make sure that people can operate in this province without having to go through that.

**Mr. Chairman:** As I recall the newspaper articles, the specific claim was made that one theatrical agent in London, Ontario, had been forced out of business; it was only biker agencies that were booking all the strippers into all of the establishments in that one town. Is your ministry investigating that at the moment? If so, I am prepared to accept that and will not go into any details. But was there any follow-up on that claim that one whole city is dominated by them? I believe the article said it was London. It was one of those cities in that area.

**Hon. Mr. McMurtry:** I am sorry, I did not read the article. But since you have brought it to my attention, it would fall within the jurisdiction of the London police force or possibly the OPP in the outskirts of London. I think you are giving an illustration of the point I am trying to make, Mr. Chairman. That is, if you can direct my attention to one specific area where you have heard of a problem, I will be happy to obtain what information I can and report back to you. We can pursue that. I personally had not read that article so I do not know to what extent it has been looked into.

**Mr. Chairman:** I believe it was in the weekend Toronto Star, if I recall correctly. It was probably two or three weeks ago, so I am sure your people can find that article and you might want to look at it.



**Mrs. Campbell:** Mr. Chairman, I wonder if Mr. Hilton perhaps could bring us up to date. I did pursue with Mr. Hilton the suggestion of the Attorney General or Solicitor General—I get confused—the matter of those who are called strippers and the establishments in which they work and their inability to get charges laid against the owners of the establishments. Mr. Hilton was kind enough to meet with a representative of that group and I know he was given some pretty specific information on pretty specific cases. He also knows that some of the crowns seem to be awfully confused as to the application of the code and what sections should be used. Would you bring me up to date and let me know what success you have had in discussing the matter with crown law officers in those cases with which you are very familiar?

**Mr. Hilton:** Mrs. Campbell, after talking to you and Diane Michael, I was in touch with the crown officers involved, the director of crown attorneys and Mr. McLeod, both in the Ministry of the Attorney General, regarding the examples you suggested I should bring to their attention. This was some months ago now—

**Mrs. Campbell:** Oh, yes.

**Mr. Hilton:** —and I cannot be very precise. But your concerns were brought to their attention—and my concerns, because I associated myself with your concerns. The sections of the Criminal Code which were applicable were reviewed and I received assurances there would be fair treatment. If I heard of any other specific examples of unfair treatment, I said I would let them know. I have not heard of any.

**Mrs. Campbell:** Did we ever sort out the interpretations of the code as between crown law officers? If you recall, they kept saying they could not charge the owner—I have forgotten now for what reason. You took issue with that, as I did. Was it resolved?

**Mr. Hilton:** I really do not know. I pointed out to them my concerns, your concerns and my interpretation, which I think met your interpretation to quite a substantial degree. I am not a criminal lawyer and I do not think you are, but I said we were two people who had practised law and this was what we thought was a reasonable interpretation. I did not get an argument. They said they would consider our suggestions and our approach. More than that I do not know.

**Hon. Mr. McMurtry:** I know owners have been charged because I have seen copies of

the information. I do know, Mrs. Campbell, this is a matter which has been considered in some detail by the Ministry of the Attorney General. You yourself have raised this issue, it seems to me, for going on probably two years at least.

**Mrs. Campbell:** Yes, one gets tired of raising this issue.

**Hon. Mr. McMurtry:** I think the crown attorney system is well aware of the issue and your concerns. The crowns are well aware of the desirability of charging owners, because the issue has been discussed, as I recall, at meetings of regional crown attorneys. But I will obtain an update for you from Mr. Takach, if you would like.

4:50 p.m.

**Mrs. Campbell:** I would appreciate it. I would like to understand what instructions, if any, have gone out to the crowns as to the sections under which they will charge. I got a little bit tired of being told they could not get the evidence from “the girls” when I knew very well at least some of them were quite prepared but could not find that the crown would interpret the Criminal Code in a way which gave them the capability of charging. I would like to know that confusion is no longer with us and that we are going forward. While we talk about strippers being part of organized crime, not all of them are.

**Hon. Mr. McMurtry:** No, no. I did not make myself clear, but—

**Mrs. Campbell:** The minister has said that. But I think we might conclude that perhaps some of those who own these establishments are really equally involved. So I would think it would be useful for us to get something straightened out so that all of the charges do not fall on the girls.

**Hon. Mr. McMurtry:** I do not want to debate the issue, but I just want to make it very clear for the record that I am not suggesting, conceding or acknowledging that there is confusion within the ranks of the crown attorney system about this. It is a matter that has been somewhat thoroughly reviewed. I cannot say that isolated crown attorneys may not be confused, but so far as the senior people in the system are concerned they are quite aware of what the legal issues are and what nature of evidence is required in order to launch a prosecution.

**Mrs. Campbell:** I do not make strong, sweeping statements, and I think Mr. Hilton would confirm to the Attorney General as I believe he did to me that there was confusion and that his interpretation was the same as mine. If that has been straightened

out, that is fine. It may be that at the top there is no confusion, but does that just filter down or does someone get some kind of directive as to the interpretation? That is really all I am asking at this point. I am sure Mr. Takach understands it, but does Mr. Takach talk to God or does he talk to some of the people operating in the field?

**Hon. Mr. McMurtry:** Mr. Takach, as you know, is one of our very distinguished crown counsel, who is the director of the crown attorney system in this province, and through our—

**Mrs. Campbell:** Yes, I am aware of his activities.

**Hon. Mr. McMurtry:** —regional crown system, Mr. Takach is dealing with crown attorneys on a day-to-day basis. I think Mr. Takach himself met one of the representatives of this entertainers' association in an effort to assure them we were concerned about this problem.

**Mr. Chairman:** The chair is placed in the awkward position at the moment on that point. My understanding is that committees during estimates have not traditionally, without any exceptions I have heard of, had anyone appear other than somebody representing an agency, board or commission. However, at the present time we have someone in the audience who does represent some of the women who have faced this problem. The Solicitor General has stated to me he would have no objection to that person supplying the committee with information.

I am willing to recognize that person on the understanding that this is a very unusual sort of circumstance, and that it is not a practice we will encourage. We obviously could not have everybody who had any concern coming before estimates committees to give evidence. But, with the encouragement of the Solicitor General and his staff, and with the acceptance of the committee, I am willing to invite Mr. Makarchuk to introduce someone who may give some information to us.

**Mr. Kerrio:** I am somewhat disturbed that today in the opening minutes we denied the Solicitor General the same kind of consideration.

**Mr. Chairman:** I am sorry. It was not the Solicitor General who was denied, it was the Attorney General.

**Mr. Kerrio:** One was pleading on the other's behalf, though, and I do not know where one left off and the other began.

**Mr. Havrot:** Mr. Chairman, what time limit are we setting on this lady who is appearing before us?

**Mr. Chairman:** That is up to the committee.

**Mr. Havrot:** What are the normal hours of sitting?

**Mr. Chairman:** We will be sitting until six, at which time we will carry the vote.

**Mr. Havrot:** Until six? I thought we were to sit until five.

**Mr. Makarchuk:** Mr. Chairman, the person is Mary Johnson. She is an employee of the Canadian Labour Congress, and one of the people involved in the organization.

**Mr. Hilton:** You know her as Mary Johnson. I know her as Diane Michael.

**Ms. Johnson:** I go under both names. I think what we are discussing here are two issues.

**Mr. Chairman:** I am sorry. Can you tell us which is your official legal name?

**Ms. Johnson:** Mary Johnson.

**Mr. Chairman:** Thank you.

**Ms. Johnson:** "Diane" is to protect me from the bikers. We are talking about two issues here. We are talking about bikers infiltrating our industry, probably along with many others, and we are also talking about what we call the G-string issue. It is a question of where we draw the line, what articles of clothing we are allowed to leave on and, from our point of view, we would prefer to be allowed to leave more on.

In Toronto, thanks to the Solicitor General, the police department, the Metro city council and the new bylaw, in most of the places we have managed to keep our G-strings on. In the rest of the province of Ontario, G-strings are still off and people are still being fired and not a great deal of prosecutions are being made. The last complaint I got was from very conservative Stratford, Ontario, where it seems that the G-strings are off.

The bikers have indeed taken over a number of agencies in Toronto, as well as in London, Kitchener, Hamilton and Waterloo. I have known about them in Fort Erie and Niagara Falls, but they are working through a more legitimate agency there and they just frequent the places and put the muscle on whoever will listen to them. Generally, if somebody big enough is coming to you and telling you that you are going to do something, you have no alternative but to listen.

As for those coming forward for prosecutions, I think a lot of you have met with me or I have bombarded your offices with calls, so you certainly know who I am. When the issue came up, when I first read about the bikers coming into the business, it was not news to me.

I used to work for one of the agencies that they bought for \$1,000, and it used to be run by a lady. As a matter of fact, there were two agencies that were run by women that were bought outright by the bikers. They got a list of clubs that these women had accounts with and a list of dancers' names, addresses and phone numbers.

I was called by the bikers as well, and asked if I would work for them. They also bring in their own girls. They are not just using girls who have been in our industry who are working on a regular basis and who do not have anything to do with anything illegal. They just dance and get paid and go home. Some people, yes, are hookers and some secretaries are hookers. I really do not like the constant association. I think that is a problem that women in our society share, being paid less so that they resort to what they have to resort to in order to support their families and themselves.

The bikers are a real problem. In the papers I made it a point to say that I did not believe it to be any of the organized major clubs. I did that because I had called the police station earlier in the day and told them that I would probably, at the OFL convention, be in a position where I was forced to make some comment on the press coverage that had been given. The police told me they did not have time to protect the general public 24 hours a day.

5 p.m.

In general, the police attitude has been good after the fact. When we have gone in—I do not like using these words here but I intend to be blunt—they have told me to eff off, plainly and simply, that if they were being called and asked if it was illegal to speed on the freeway they would tell people, "Not if there isn't a cop there to stop you."

They have since apologized for that but, in the interim, cases were lost. What happens with the G-string issue is all these arrangements are made in a back room. There is one witness, the girl who has been told. We lost cases where we wanted to charge the owner under section 422 of the Criminal Code, counselling to commit an offence where the offence is not committed. Now the only way we do not commit the

offence is either by going on stage and getting probably literally dragged off when we refuse to remove the G-string and go nude, or by refusing when the boss first tells us that is a condition of employment in his office. We have been told that since we have the option not to take the job he has not in fact counselled us to commit an offence; we have a choice—we can be unemployed.

I hope there was some reason somewhere for writing a provision in the Criminal Code for counselling. Something must constitute counselling. If I tell people they must do this as a part of their job and it is against the law, counsel them to commit an offence, if they refuse I should still be liable for counselling to commit an offence. I hope everyone who is asked to break the law does not do it. You should not have to charge these dancers first and get a prosecution before you can lay a charge against an owner. Prosecutions should start with the people, whether or not there is one-to-one evidence only. There should be co-operation. We all know these things are done mostly over the phone or in back rooms. Most crimes are committed over the phone or in back rooms these days. If that evidence is not going to be admissible, then we may as well give up on the problem today and just resign ourselves to having people come over, take over the industry and do whatever they want. Then the Criminal Code is not worth the paper it is written on.

The girls are reluctant to come forward and testify because some of them have been told the proceedings—and, of course, it is true—may go on for a period of two or three years. But they have also been warned they are prosecuting upstanding businessmen in the community and if their reputations are questioned by the girls and if they miss one of those trials or hearings they will be charged. I think that is enough to deter someone who already has suspicions and already knows she is a social outcast and feels there is a great deal of prejudice already against her. I think that is enough to deter her from going to the legal procedure.

We are a union here. We are not a law enforcement agency. We do not have the power, the strength, the arms that are necessary to go out and gather evidence against bikers or against unscrupulous club owners who have a great deal more money and muscle boys than we do. If I take 40 of my girls in and try to fight them, I am going to lose. This is a problem of law enforcement. It is not a labour issue. It has become



a labour issue with our union and there is no way we can deal with it.

I know that no one would want to send a policewoman into that kind of a situation to investigate and to get firsthand evidence, but I really cannot see any other way. If a policewoman refused to take off her G-string or refused to dance when she heard that was a condition of employment, or if the agency were prosecuted for perpetrating it and making it a condition of employment, that might work. We are told by the agents and by the club owners, "You must go nude." There are still a number of places that advertise daily in the *Toronto Sun*, "No G-strings, totally nude." Now we have mud wrestling, where occasionally they pull people up from the audience who are not even a part of the show against their will and have three men take off their clothes in public with the announcers egging them on and the audience, predominantly men of course, enjoying it.

So it is a big problem and it is a province-wide problem. The only provinces where it is not a problem are those where there are no dancers at all. We would like to be a legitimate business. We would like to be regulated and have strong legislation to stop these people from coming into our industry. We are not really afraid of becoming legitimate and paying taxes. We would like to have our T-4 slips. It is difficult without them.

There are a whole lot of reasons why this is a borderline industry. The few of us who want to maintain some kind of artistic integrity feel it is imperative that we get the legislation and the police protection that we need. You are being foolish if you think we have the strength by ourselves to stand up and testify against these people without strong police protection. It is impossible.

**Mrs. Campbell:** May I ask who gave you the advice that you said you have been given? Were they police officers, or officers of the crown? Who gave the advice?

**Ms. Johnson:** In the 2222 Eglinton Avenue East courtroom there was a crown attorney, either an Indian or a Pakistani gentleman, who told us that since we had the option of not taking the job it was not counselling. He dismissed the case that we put in front of him. We had five counts against the Olympic Tavern. This was the sixth charge we had attempted to lay against the Olympic Tavern. On the first, five of the girls were phoned by police, not from the downtown morality squad, but from the division the Olympic Tavern is in. I am not sure offhand

which division that is, but it is very easy to check. The Olympic Tavern is on Evans Avenue. The girls were asked what grudge they had against this upstanding businessman that they were pressing charges that he counselled them to do indecent acts? Were they aware that they would spend a minimum of three years in court and they probably would not win, and that if they failed to show up even once they would be charged? That is a public nuisance and we do not need that sort of attitude, they were told.

These girls called me up and said, "We are afraid that police officer has a lot more authority than you do. You are telling us everything is going to be fine and he is telling us something different." We lost their co-operation. Then, of course, when there was a subsequent investigation a couple of months after the whole thing was thrown out of court, those girls were not willing to come forward for a second time.

**Mr. Chairman:** Does the Solicitor General have any comment?

**Hon. Mr. McMurtry:** The only comment I would like to make, Ms. Johnson, is that I am certainly pleased to take the information you have given to me under advisement. I assume if we want to pursue some of these details with you there will be no difficulty in contacting you.

**Ms. Johnson:** No, there will not be.

**Hon. Mr. McMurtry:** Because we will have a record of your evidence which could be very helpful. I will be discussing some of these issues with my senior law officers. There may be some further information we might like to obtain from you.

**Ms. Johnson:** We have given all the information to the police.

**Hon. Mr. McMurtry:** Which police force are you speaking of? Are you talking about any one in particular?

**Ms. Johnson:** The morality squad on Jarvis Street. I met with the chief of police and I met with Staff Inspector Ewing's morality squad on numerous occasions. There are quite a few places they have managed to clean up, but we get things with the G-string issue. There is a theatre called *Le Strip* that advertises every day, "No G-strings, totally nude." It is a condition of employment that you lie down on a ramp two inches away from people's heads, and you must be on the floor nude for your last song.

We have made numerous complaints. I understand charges have been laid. These people want test cases. There is a tavern



in this association that is pushing its members. Their attorneys are pushing them for test cases. There is a club in the west end of the city where they have lesbian acts every week. They are being charged but they are not making it through the courts. The provisions on nudity are so vague.

We have good intentions but there is nothing we can do. It would appear that unless there is some Criminal Code revision there is nothing that any of us can do, because on technical points of law they are not making it through the courts. There is appeal after appeal. There is still a very shaky decision on the Valerie Sidey case that was started in 1978. Still, a decision does not really say you cannot have a G-string off. It just says you do not need to produce evidence that anyone is offended. We have been willing to offer evidence that we are offended, but they do not want to take it.

**Hon. Mr. McMurtry:** I am not quarrelling at all, Ms. Johnson, with respect to your suggestion that it may be that amendments to the Criminal Code are desirable. Amendments to the criminal code in this area, as I think you know, are fairly controversial issues because there are different views across the country as to whether the code should be amended in this area.

I understand, and I am not being critical of any other province, that in Quebec the present provisions of the code are virtually totally ignored. They have made a judgement that they are not going to be bothered with this type of law enforcement. So the issue of nudity in Quebec, as I understand it, so far as the entertainment industry is concerned, is not an issue. Are you able to assist us as to what effect that has had with respect to the nature and character of the people who are running these establishments, say, in the Montreal area?

**Ms. Johnson:** It is the syndicate. It is common knowledge. Organized crime is running it.

**Hon. Mr. McMurtry:** In Montreal. So it is not an issue as to whether they have nudity prosecutions, it is just the fact that the syndicate you say, has taken over the industry.

**Ms. Johnson:** It has been in there for years. I thought that was common knowledge.

**Hon. Mr. McMurtry:** That was my information.

**Ms. Johnson:** And that is the same connection with the bikers.

**Hon. Mr. McMurtry:** I was just curious as to what your information was.

**Mr. Makarchuk:** What is there to prevent a similar situation from developing in Ontario? The way it appears right now there is some form of organized syndicate, or whatever it is, there is an organization that on the surface appears legal but uses illegal methods to obtain its business and to operate.

**Hon. Mr. McMurtry:** Except that I do not think that is necessarily accurate, because the organized crime in Montreal is very much involved in the entertainment business. We are well aware of that. Again, it is a form of laundering. They run many establishments, I am told by officials in Montreal, without breaking the law except for the nudity, per se, which law enforcement officers ignore. They hire the entertainers and pay the entertainers.

**Ms. Johnson:** As long as the entertainers do not tell any of you people about the other things that go on there, yes; they pay the entertainers and no harm comes to them.

**Hon. Mr. McMurtry:** Again, you are talking about my concerns, the traditional relationship that, unfortunately, exists between organized crime and the sex entertainment business in North America.

**Ms. Johnson:** Unfortunately, most of the people involved in sex entertainment are women, younger women and, generally, women who do not know a great deal about the law or the system at all. Half of them move when it is time to pay their rent. They very often do not have families they can turn to. When someone approaches them like this, they do not have any place to go. Quite frankly, except for the fact that I have a big mouth, I would not have any place to go either. If it was not for the press and the number of times I have bombarded your office with calls and made a scene, I would be in the same position.

But when I was finally hired by the Canadian Labour Congress, I was offered bookings in two different places. One was in the far reaches of Montreal, small towns, and I sort of had an idea what they meant by that. The other was Japan. I could go to two places. I could not work in the city any more. Nobody has to spell out to me what that meant.

**Mrs. Campbell:** I think the difficulty, as I see it, is that, in Quebec, I guess everybody knows the rules or the lack of them. What bothers me is that in Ontario, again,

the perception is that we really must run a clean city, but solely at the expense of the girls involved. That is the perception, the Solicitor General tells me, and you have confirmed it in part. There has been some cleanup.

Nevertheless, it has taken a lot of time and energy and a lot of years, and we still have this onesided approach. I suppose it is like the philosophy of prostitution: there is only one person involved. I have often wondered how we get to that conclusion, but men make the laws, or did, and I suppose that is why we had to consider some biological urges.

Interjection.

Mrs. Campbell: Oh no. Did you not know that women never—no, certainly not.

Mr. Hilton: Take my wife.

Mrs. Campbell: Well, thank you, but I do not think it would be profitable for me.

Honestly, I guess I feel that there is a good deal of hypocrisy in our society and if, by rounding up—and again I quote—"the girls" we can portray to the public at large that we are a moral society, we have probably achieved a purpose. I find that more distasteful than the fact that in Quebec it is wide open and everybody knows it. My preference is that we bear down on those who are in a position to lay down the law, those who probably have the means, whether it be muscle or money, to evade. I think it is time.

I look at myself at the time I came into this House when I started out with this job to do, to work forward to, concerning abused and battered women. Do not make me take this on as a crusade for the next whatever period of time there is. I suggest that you make it your crusade, and let us help you in this area. There have been other instances where I have been advised—correct me if I am wrong—that where a woman is claiming an attack or something on the street, if the police officers know that she comes from this establishment they seem to take the position that she has invited it.

Ms. Johnson: That happened to me.

Mrs. Campbell: Yes: I was trying to enlarge upon the problem. It is not just what happens in the establishment. It is the attitude of at least some police officers, not all of them but some of them, that once you are in this business you cannot claim the attention of the police if you are attacked as other people are attacked in the course of the violence in the city. That bothers me, too.

Ms. Johnson: If I may be allowed to make a suggestion, you might get a lot more co-

operation from the women themselves if they were given some way—in Buffalo they have a way that if you do not want to identify yourself you can give a three-digit number so that you do not have to say, "I am so-and-so and I want to make a complaint against the bikers." That makes them very open to harassment from the bikers. Maybe if they were offered some way out so that they do not have to appear publicly in any way—as we all know, bikers have a tendency to blow up people who testify against them. Maybe this is one way to get some people to come forward.

5:20 p.m.

I think you are going to have to be very patient, because you have to understand that this coercion is really very heavy and devastating for these women. They are very afraid. Without offering some kind of protection, you have no hope of getting them to come forward and testify. There are a few of us who would even be willing to get wired up to go in to get proper evidence against some of these people. We would go in and book ourselves, but we sure would like to know that there is someone pretty close behind us. If the policewomen are afraid to do it, I am not. Apart from that, I do not know what more assistance we can offer.

Mr. Chairman: I am sure you have been of assistance to the committee and to the Solicitor General in understanding the problem a little bit more, Ms. Johnson. I am sure there will be follow-up questions in the House from the various critics, and possibly statements in the House by the minister on this matter.

Hon. Mr. McMurtry: Thank you, Ms. Johnson.

Mr. Chairman: We are still on vote 1703. Since the chairman usually gets in one or two questions at the end of a vote, I would like to ask the minister if he has had an opportunity to deal with the matter I brought up in the House, namely, the problem which the humane society brought to me of these rather ugly collars that are being used on dogs. They are being sold in pet shops. The one I have cost \$8.59 in Petland, which I understand is a Mississauga store.

The veterinarian I spoke to and showed the collar to—the one who takes care of my dog—said he has seen a lot worse than this one. They are actually sharpened. His opinion was that, while he did not think it was a necessary training tool, in the hands of a trainer who knows what to do with it the collar is not nearly as damaging. But

the fact is it is being sold in a pet shop. If somebody who does not know what on earth he is doing in training a dog uses it, it is particularly cruel and inhumane.

The Toronto Humane Society said it could see absolutely no reason why these devices need to be used in any kind of training process. That was a comment echoed by the veterinarian I spoke to in Rexdale, and by the Ontario Humane Society.

I think I asked the question to you as Solicitor General and as Attorney General. As Attorney General, you were asked whether there would be any way in which stores could be advised that, if they continued to sell this collar, they may be in violation of the Criminal Code of Canada. I do not know whether you have had an opportunity to have some of your legal advisers look at that, but it is very difficult to get prosecutions under the act, as you well know, and as the humane society constantly complains.

The other possibility is that either you or the Minister of Consumer and Commercial Relations (Mr. Drea) pass some kind of legislation simply saying that these things may not be sold over the counter in pet shops. The veterinarian I spoke to said if you walk into the average pet shop there is a high school teenager who is moonlighting, earning spare cash selling things like this collar. They have no idea how to use it. They probably do not even know which way to put the thing on.

I am concerned. I think the way in which we treat some of our animals is an indication of the way in which we see ourselves as a society. Any form of brutality, be it to people or to animals, is a form of brutality to ourselves and says something about our society. I know you have been concerned about such things as dog fighting and other kinds of inhumane behaviour, and I am wondering if you have had an opportunity to look at this problem.

**Hon. Mr. McMurtry:** We are looking at it, Mr. Chairman. I am sure we have reported to you on it. I cannot tell you exactly where it stands.

When you asked the question in the House, I directed my staff to look at a number of areas. First of all, as you have already suggested, the Ontario Humane Society and Tom Hughes were rather important because we would need expert evidence in court to determine whether this type of device, which certainly looks to you or to me to be a cruel form of device, whether we could obtain the

expert evidence to support our impressions in that regard.

**Mr. Chairman:** It was Tom Hughes who personally bought that collar at his corner pet shop as proof that they are readily available.

**Hon. Mr. McMurtry:** As you point out, these prosecutions are difficult. I can recall, just as an example, a highly controversial prosecution which we launched against one of Canada's better known equestrians a few years ago with respect to a matter involving the training of a horse.

I read through the transcript myself, because what appeared to me to be some pretty cruel methods used in the training of horses led to an acquittal because of the expert evidence that came forward on behalf of this equestrian. I believe a former member of Canada's Olympic equestrian team testified that in the context of training horses it was not cruel within the meaning of the Criminal Code.

Being well aware of the controversy that was engendered on both sides of that issue—on the one side we had people who were incensed by the acquittal; yet, there was an equal number of people who were incensed at the prosecution—I mention that only as an indication that it is an issue whose complexity I am aware of. I would have hoped to have had something back to you by now. I will try to report to the Legislature, because your question was asked in the Legislature, as soon as possible.

**Mr. Chairman:** If it would be of any help to the minister, I could certainly lend him the collar. I assume he is not going to try it on anyone or anything.

**Mr. Hilton:** Please!

**Mrs. Campbell:** John is moving away rapidly.

**Mr. Chairman:** I do not think it fits John's neck.

The only other very brief question is, at the Ontario Police College are any of the staff trained in what I would call andragogical methods, namely, adult learning techniques and teaching techniques? Is there anyone with certificates or degrees in adult education processes?

**Mr. MacGrath:** We have one with a master's degree in education, and on January 1, 1981, we will have a second staff instructor who has his master's and is working on his PhD.

**Mr. Chairman:** Is that a degree in education or in adult education?

**Mr. MacGrath:** Adult education.



**Mr. Chairman:** Are you encouraging your staff to attend the Ontario Institute for Studies in Education to involve themselves in either the certificate program in adult education?

**Mr. MacGrath:** This is one of the reasons that we went ahead with the university association in the first place, to improve the calibre of those who are on staff down there.

**Mr. Chairman:** Are there regular professional development seminars for the staff, as there are for high school teachers and community college staff?

**Mr. MacGrath:** Monthly.

**Mr. Chairman:** In which people with teaching skills deal with teaching skills, not just with content?

**Mr. MacGrath:** We bring in resource people from certain universities, such as Queen's and Western.

**Mr. Chairman:** That is encouraging.

Vote 1703 agreed to.

On vote 1704, Ontario Provincial Police:

**Mr. Chairman:** We now go on to the Ontario Provincial Police, which I suspect we have covered to some degree, indirectly or directly.

5:30 p.m.

**Mr. Makarchuk:** Has the minister made any decision on the OPP station in the Brantford area? There has been a lot of talk and discussion on that.

**Hon. Mr. McMurtry:** Mr. Chairman, we have a number of distinguished representatives of the Ontario Provincial Police with us. I would like to ask Commissioner Hal Graham, to come forward, together with the Deputy Commissioners James Erskine and Ken Grice. You might like to hear from some of these gentlemen.

**Mr. Chairman:** We are always pleased to see them. It is always so much nicer having them here, than over there, as we have had in the past. We are sure it is a lot more comfortable for them.

**Mr. Makarchuk:** Or pursuing you down the highway.

**Mr. Hilton:** I might say, Mr. Makarchuk, that even with my great association with them, if I ever hear a siren, I am very pleased when it goes right on by.

**Mrs. Campbell:** That is just your guilt. You must have been doing something wrong to worry.

**Mr. Hilton:** I admit it, I am human.

**Mr. Makarchuk:** One question that was raised concerned the Ontario Provincial Police

station in Brantford. I gather the present quarters are inadequate for the services they have to perform and for the staff. Is that being considered? Is that matter somewhere down the line?

**Hon. Mr. McMurtry:** I think it is on our priority list.

**Mr. Graham:** Mr. Chairman, we have long recognized the inadequate facilities at Brantford. It is on our priority list, and very near the top. But we are still dealing with the Ministry of Government Services and, until we can get the funds, we cannot give you a date.

**Mr. Makarchuk:** There is the possibility—and this is being parochial—that the city, because it annexed a new area, would want to have a satellite police station, or maybe even a new station altogether, in another part of the city, and that perhaps the two facilities could be tied together for economic reasons.

I want to get back to some of the things that were raised earlier with Ms. Johnson. This is the matter of the co-ordination which should exist, or which I assume exists, between the OPP and the municipal police, in dealing in particular with problems like that. It seems to me that, in many cases, the OPP is stuck with the bikers—if I can use that term. They originate in the urban centres, but they seem always to end up in your jurisdiction or in some of the smaller villages when they hold their rallies.

**Hon. Mr. McMurtry:** Some of them are gentleman farmers.

**Mr. Makarchuk:** That is right. Some of them are gentleman farmers.

**Mrs. Campbell:** Just a cotton-pickin' minute.

**Mr. Makarchuk:** Do you feel you have adequate facilities, the communications and the exchange of information to deal with these problems, or is there sometimes a problem if it originates in one place but ends up in your lap?

**Mr. Graham:** About 15 years ago, we recognized the problem with the outlaw motorcycle gangs. We are also quick to point out that there are many legitimate motorcycle clubs, including a club that is confined to police officers.

About 15 years ago, we set up a monitoring system and assigned a full-time officer to keep track of these people along with the municipal police throughout the province. Most of the information was obtained in Toronto. Our officer went throughout the province, talked to people and disseminated



the information. That squad has been increased. At the present time, our local men are working with Sergeant Taverner of the Metro police. They are dedicated to this problem. Is it recognized as an organized crime situation and it has a high priority, not only with us but with police departments throughout Canada.

**Mr. Makarchuk:** There is one incident I am aware of in which one of the gentlemen who is incarcerated right now and who belongs to a bikers' club was attempting to come back into the community. It seems to me that, when a discussion was held as to whether he should be in, the local police were aware of his activities and aware of this booking agency operation. It seems they have that information, and I wonder whether you people have that information and whether there is an exchange of information on these kinds of things.

Let us get to the root of it. In order to fight that kind of crime in Ontario, each municipality cannot do it itself; there has to be co-ordination from the top. The only agency I can see doing that kind of thing is the OPP, which crosses jurisdictions and everything else. Do you feel you have the capacity, or is there something you feel you need? I realize the Solicitor General is sitting here and I am sure you are not going to be critical of him, but here is a problem.

Shall we say the municipal police are aware of it? It has been in the news. I am just using this problem as an example. There are other problems. Somehow it is growing. In other words, this particular operation is expanding.

**Mr. Graham:** We have the capacity. We realize the problem. We realize that the biker gangs are mobile, and that they do roam throughout the province. In addition to our local fellows working out of general headquarters, of course, we have our detachment officers throughout the province. We have good co-operation with municipal and regional police. This is an area in which policemen feel repelled by the activities of these people, and we are certainly co-operating and doing everything we can to curtail them.

**Mr. Makarchuk:** Do you feel you have enough resources at your command to come to grips with the problems? It seems to me it is the responsibility of the OPP because organized crime is also a very mobile crime. They move out of the jurisdiction of Toronto or Metro Toronto; they can move into other jurisdictions. I presume you are doing that

co-ordinating between the various forces, as well as taking an active part in it yourself.

**Mr. Graham:** We are. As far as resources are concerned we need more, there is no question about that.

**Mr. Makarchuk:** Did you hear that, Roy?

**Mrs. Campbell:** They need more resources.

**Hon. Mr. McMurtry:** I have been saying that for as long as I have been Solicitor General. I have said on many public platforms that I am not satisfied.

**Mr. Makarchuk:** But surely if the problem is developing, if you do not use adequate resources right now to cope with it—we are just dealing with this one problem and I do not want to concentrate and say that is the only problem; there are other problems in Ontario associated with these kinds of incipient things that are flourishing to some extent—if you do not squelch it now, are you ever going to catch up later on in terms of resources? You will need more resources later on. You will be faced with greater problems and it seems to me that in terms of your ability to cope with them and the pace of growth on the other side, you are not keeping in step with them at all. You are falling behind and they are going ahead of you.

**Hon. Mr. McMurtry:** I would not express my concern in quite those terms, Mr. Makarchuk.

**Mr. Makarchuk:** In such apocalyptic terms.

**Hon. Mr. McMurtry:** That is right. But I have indicated my concerns about what I believe to be underfunding of the Ontario Provincial Police in this province. I have never made any secret of my own concerns in this respect. It may even be that some of my colleagues in government may not be totally happy with the fact that I have been rather public about expressing these concerns. Every minister probably feels that his ministry is underfunded to some extent. We all tend to become rather parochial about our own ministries. That is natural. We are all, as you know, competing for what appears to be an ever-shrinking taxpayers' resource.

The government and the OPP are right now reviewing in some detail our whole Ontario Provincial Police operation with a view to making a case to the government as a whole and my government colleagues that we are underfunded. There is no question about it in that respect. My deputy said to me a moment ago, "You are preaching to the converted."

5:40 p.m.

The interesting thing to note is that our study has indicated that the OPP has done

what I think is a very admirable job, notwithstanding the fact that their manpower resources have been somewhat frozen in recent years. The budget, of course, has to increase with inflation but the actual manpower level has been frozen. There are issues, too, related to the increasing size of some of the regional departments. But our internal study has shown that the OPP continues to increase its work load, or its production, you might say, in relation to the number of personnel it has.

My view is that we really have reached the point where we cannot expect the force to continue to expand its work load given the present resources. I consider it a very serious matter and make no bones about it.

**Mr. Makarchuk:** I also think you are probably aware that you are not really dealing with the average, run of the mill criminal, the dumb hood. You are dealing with some pretty sophisticated people right now who are involved in those criminal activities. They use some very modern means and they have quite large resources at their command. That is why I feel you cannot continue. There has to be some agency in this province that can take them on and deal with them. The OPP should be doing it. It is the only agency I can see that can do it.

**Hon. Mr. McMurtry:** We have expanded our resources in that area for special services. The number of men added to these areas has increased fairly dramatically in recent years. The commissioner and his colleagues can be more specific. I have been able to extract some funds for some of the technology that has been added. We are developing a new communications system. While I think we have been keeping up pretty well with "organized crime," quite frankly, we have had to draw resources from the field to do that, to some extent, which means it has put a great deal of pressure on our field operations. We are concerned about that.

I want to make that point because I think we are doing a pretty good job in the OPP in the fight against organized crime, the joint force organizations. But we have had to drain resources from other areas of activity, which has put an enormous work load on individual members of the forces in the field. We have a very high overtime bill, which again illustrates the additional work load that has been put on the individual officers. So while I do not like to create the impression that we are falling behind, I think we are reaching a point where, unless

we get additional resources, the public will suffer.

**Mr. Commissioner,** you might want to add something to that.

**Mrs. Campbell:** At least you have some encouragement, **Mr. Graham.**

**Mr. Graham:** Yes, it is very welcome.

**Mr. Chairman,** with regard to special services, some four years ago, when the new wiretap laws came into effect, it required a tremendous additional number of men. We must go before a judge with an application and seek an authorization. When the authorization is given, if it is given, and usually it is, the wiretap must be manned around the clock. Otherwise, it is not admissible.

**Mr. Hilton** was mentioning our blind man. He is a special constable, and he must be sworn in as a constable to do this task, according to the Criminal Code. I might say that in about 95 per cent of the cases there are good results. Authorizations for this technique are applied for only as a last resort, and that is the only case in which the judge will give you the authorization. They are all serious cases. Wiretaps are very effective.

The special services has been increased to deal largely with this area, and with organized crime, intelligence work, the traditional work of the criminal investigations branch, the tremendous number of frauds, and the work we do for other ministries in the government.

**Mr. Hilton:** Nineteen other ministries are being served, according to a count I made the other day.

**Mr. Graham:** Nineteen other ministries out of 25. We are away behind on that work, but we have everything on a priority basis, and we are certainly doing our best, not only in the special services but in every area.

**Mr. Makarchuk:** You are doing your best, but you are hard pressed.

**Mrs. Campbell:** I can recall that when I first came into this House and we dealt with these estimates, we were told constantly that there was no organized crime in Ontario. What did you do wrong that we have so much of it which is sexually related?

**Mr. Graham:** I think it is a matter of semantics. There was no admission that the Mafia had control in Ontario, but we have always known that there is organized crime.

**Mr. Makarchuk:** There are other groups that are just as organized.

**Mr. Chairman:** There are other countries that are putting a lot of money into Ontario

at the moment. I am told there is money coming in from Hong Kong and certain other jurisdictions. Is this increasing the complications of dealing with organized crime that comes in from these various countries? How do you deal with police forces in other countries which, perhaps, do not have the same reputation as yours and which may have a reputation for being involved with some of the very people you are fighting?

**Mr. Graham:** Most of our dealings are with the Americans. If I may just touch on one point regarding the bikers again, three or four years ago, in North Carolina, members of one bike gang shot five members of another in a clubhouse. We are asked to go down and assist, and our people did set up a bike gang operation for the police department, which they had not had before. So we had very close co-operation.

**Hon. Mr. McMurtry:** I should have mentioned before the fact that I have attended at least two annual meetings in which we have had a seminar for police officers here in Toronto dealing with the war against criminal bikers. How many jurisdictions are represented?

**Mr. Graham:** About 100, I think.

**Hon. Mr. McMurtry:** At our conference, we are regarded as being in the forefront with respect to facing this particularly unpleasant challenge.

**Mrs. Campbell:** What jurisdictions are we talking about? Canadian? American?

**Mr. Graham:** All the provinces.

**Mr. Makarchuk:** Some of the economic estimates sort of indicate that the drug business in the United States is about the third or fourth largest economic activity in the country. After General Motors comes marijuana or something like that.

**Mrs. Campbell:** It is about to be unionized.

**Mr. Makarchuk:** Obviously, there is a lot of pressure, and it indicates the potential that exists there for crime. That is why I feel that if it can develop over there to that size, somehow I feel you should be putting those resources in here.

**Hon. Mr. McMurtry:** We are regarded by our sister jurisdictions, as I think has already been indicated, as being leaders in the field as far as the success ratio in the fight against the bikers involved in organized crime goes. We are by no means complacent—we have a lot of work to do, obviously. I cannot give you the number of charges off the top of my head, but a very large number of charges has been laid in Ontario against bikers. A

number of them have been convicted of very serious criminal offences, including murder.

5:50 p.m.

There were a number of predictions in the media here two years ago that there were going to be major confrontations with the bikers in Ontario because of their activities. That did not take place, largely because of the fact that the bikers know they are being pretty closely watched by the police forces in this province. While we are not in any way complacent, I do not think my friends in the OPP should hide their light under a bushel either when it comes to describing the success we have had.

**Mr. Graham:** Yes. Many times bikers are charged, but the press does not indicate that they are bikers. Recently we had every member in one gang charged.

**Mr. Makarchuk:** I am not just dwelling on bikers. Let us get this straight. The chairman has pointed out that there are rather sophisticated crimes moving into the country, at least I think so from my discussions with various police officers. I feel that if you are going to place the responsibility anywhere, you put it with the Solicitor General and the Ontario Provincial Police because they are the only co-ordinating force in the province, this is simply because that kind of crime moves and moves very fast.

**Hon. Mr. McMurtry:** It moves from jurisdiction to jurisdiction.

**Mr. Makarchuk:** That is right, and the only force with jurisdiction over the province is the OPP.

**Hon. Mr. McMurtry:** That is right. This is why the joint force operations have been quite successful. The forces, despite their traditional rivalry—in as much as they all like to think they are the best, and that is the way I hope it will always be—work together pretty effectively. A lot of this organized crime, as we have already discussed and as you well know, simply crosses international and provincial borders. Those of us with responsibilities in law enforcement have a big job to secure the resources required to maintain a reasonably high level of law enforcement in this area, as we think we should.

**Mr. Chairman:** Mr. Havrot has not had an opportunity to ask any questions, and I will recognize him for the next seven minutes if he wants.

**Mr. Havrot:** Thank you very much, Mr. Chairman. I would just like to take this opportunity to commend the force on its



excellent performance in Ontario, and also to point out to the members of the committee that, according to the summary here relating to the operations of the Ontario Provincial Police, in 1976 there were 4,133 men on the force and, as of today, there are only 4,006. That is a drop of 127. Considering the increase in population and in crimes and the complexities of society, our force is doing an excellent job even though it is getting smaller.

I would wholeheartedly support the Solicitor General in his attempts to get additional funds to beef up the force before we get down to the skin and bones that will be left of the force in another few years if this is not given further consideration. I do feel that the force is doing an excellent job, considering the financial pressures and the cutbacks in the force down the line over the last four years.

**Mrs. Campbell:** In dealing with organized crime—and we recognize the different jurisdictions in the field of narcotics—what co-operation is there between the OPP, the RCMP and the local police force in this area? Is it a good, open kind of co-operation? Is it stalled on occasion by reason of jurisdictional situations?

**Mr. Graham:** Mrs. Campbell, I think I should go back to about 1974 when there were a lot of drugs appearing in the school yards and at public affairs. Young people all over the province were becoming involved. At that time, the Royal Canadian Mounted Police realized that, although they had been traditionally responsible for the enforcement of the drug laws—they had RCMP squads only in large centres in Ontario like Toronto and Hamilton—it was impossible to combat this problem throughout the province, especially in the small towns. It was at that time that we organized our own drug branch, and since then it has been growing. The RCMP has been interested mainly in international drug trafficking, although they do some interprovincial work as well.

As far as our co-operation is concerned, on the drug matter and in all except one or two areas mentioned by the minister, it has been very good. It is a united front against this problem. The RCMP also handles bankruptcies and other matters mentioned by the minister. We have joint force operations with the municipal police and the RCMP in the larger centres such as Toronto, Hamilton, London, Ottawa and Windsor.

**Mrs. Campbell:** What has happened with the young people? I have a granddaughter

who is in the teen-aged group and, from listening to some of these young people, I sense they are feeling very isolated because, at parties and so on, if they are straight, it is a bad scene. So they stay home and do not attend. I wonder if we have any tag or handle on just what the situation is with our young people in the big cities. Has this problem grown? Has it lessened? Has it levelled? What is the picture?

**Mr. Graham:** My information is only general. I have no specifics.

**Mr. Makarchuk:** The problem is that you are not exactly in that age group.

**Mr. Graham:** No. I am told it has levelled off.

**Mrs. Campbell:** Surely there must be somebody in the three forces who knows what is going on.

**Mr. Graham:** I am told the drug trend is levelling off and going down.

**Mrs. Campbell:** Is there a change in the branches to some other—

Interjection.

**Mrs. Campbell:** Mr. Makarchuk, you have had a fair amount of time.

**Mr. Makarchuk:** I was not cutting you off, Margaret. I was just saying our time runs out at six o'clock. I am not asking for time.

**Mrs. Campbell:** I just wondered if there is a change in the use of drugs. What uses are children getting involved in? Have they moved from grass to alcohol? What is the move?

**Mr. Graham:** I think it is fairly constant as to marijuana and alcohol. I do not think there is much change.

**Mr. Chairman:** I recognize it is about one minute to six o'clock. We agreed to call the vote at six.

I was driving along the highway the other day, looked at my rear-view mirror and thought I saw somebody I recognized on a motorcycle. Now I realize it was probably Commissioner Graham out there riding his bicycle.

**Mrs. Campbell:** Did you run him in under a citizen's arrest?

Vote 1704 agreed to.

Vote 1705 agreed to.

**Mr. Chairman:** Mr. Minister, I think you have your money.

Shall I report the estimates of the Solicitor General for 1980-81?



**Hon. Mr. McMurtry:** Thank you, Mr. Chairman. I would just like to say I am sorry that we did not have more time, particularly with our friends from the Ontario Provincial Police. As we all know, it is an excellent force which does an admirable job. There are many fascinating dimensions to their challenges. I guess we can assure them that, perhaps next year, there will be more time to discuss some of these interesting issues with them.

**Mr. Makarchuk:** Not only more time but, I hope, more money to talk about. Time we can find, but money is what we need.

**Hon. Mr. McMurtry:** Mr. Chairman, to you and the members of your committee—despite any problems you may have with the Attorney General later today or any problems the Attorney General may have with you—I would like to say, on behalf of the Solicitor General, that I appreciate the manner in which you have dealt with these estimates. Thank you very much.

**Mr. Chairman:** Thank you. We will probably see you next week anyway. I am not sure about that.

The committee adjourned at 6:01 p.m.

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 Davison, M. N. (Hamilton Centre NDP)  
 Havrot, E. (Timiskaming PC)  
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 Kerrio, V. (Niagara Falls L)  
 Lawlor, P. D. (Lakeshore NDP)  
 Makarchuk, M. (Brantford NDP)  
 McMurtry, Hon. R.; Attorney General and Solicitor General (Eglinton PC)  
 Philip, E.; Chairman (Etobicoke NDP)  
 Renwick, J. A. (Riverdale NDP)

### From the Ministry of the Solicitor General:

Graham, H. H., Commissioner, Ontario Provincial Police  
 Hilton, J. D., Deputy Solicitor General  
 MacGrath, S., Chairman, Ontario Police Commission  
 Swanton, W. S., Director, Ontario Police College

### Also taking part:

Johnson, Ms. M., Canadian Labour Congress













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